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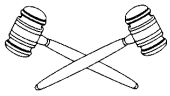
HOUSE PRACTICE

A Guide to the Rules, Precedents and Procedures of the House

Wm. Holmes Brown
Parliamentarian of the House
1974–1994



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PERIODIC PREPARATION BY HOUSE PARLIAMENTARIAN OF CONDENSED AND SIMPLIFIED VERSIONS OF HOUSE PRECEDENTS

SEC. 332. The Parliamentarian of the House of Representatives shall prepare, compile, and maintain on a current basis and in cumulative form, for each Congress commencing with the Ninety-third Congress a condensed and, insofar as practicable, up-to-date version of all of the parliamentary precedents of the House of Representatives which have current use and application in the House, together with informative text prepared by the Parliamentarian and other useful related material in summary form. The Parliamentarian shall have such matter printed for each Congress on pages of such size and in such type and format as he considers advisable to promote the usefulness of such matter to the Members of the House and shall provide a printed copy thereof to each Member in each Congress, including the Resident Commissioner from Puerto Rico and may make such other distribution of such printed copies as he considers advisable. In carrying out this section, the Parliamentarian may appoint and fix the pay of personnel and utilize the services of personnel of the Library of Congress and the Government Printing Office.

Public Law 510—91st Congress

Foreword

This new addition to the parliamentary library of the House was initiated by William Holmes Brown during the last years of his 20-year tenure as Parliamentarian. Its publication target was to coincide with his retirement in 1994, but because of the many changes in the rules adopted in the 104th Congress, the text was modified and enlarged to accommodate these revisions. As a result of this decision, the publication has been delayed but the volume is current.

This work will require revision when rules are again amended and as necessary to incorporate new interpretive rulings by the Chair. However, most of the general principles explained in this text will continue to apply, even as new rules are adopted and the procedures of the House continue to evolve.

With the publication of this summary work, and with the updating in each Congress of the *House Rules and Manual*, current precedents are now accessible to Members and staff of the Congress.

The Office is also beginning to work on an electronic data base of decisions of the Chair, to be updated periodically, which will be an additional source for parliamentary research.

Charles W. Johnson III
Parliamentarian
1994-

Preface

The procedures used in the House of Representatives, while rooted in the Constitution, Jefferson's Manual and in many time-honored House rules, have been greatly modified in the last quarter century. Voting practices have changed; debate has become more structured; reliance on special orders of business has replaced the use of more traditional methods of considering legislation on the floor.

In this volume attempt has been made to integrate the long-established norms of House procedure with the innovations made possible by technological advances and by reforms and disciplines introduced by such laws as the Legislative Reorganization Act of 1970, by the Congressional Budget Act of 1974, and by changes in the House rules adopted at the beginning of recent Congresses. This volume reflects the modern practice of the House as of the 104th Congress.

The rules, procedures, and precedents of the House are sometimes seen as arcane and unnecessarily technical. Yet they are a distillation of the collective wisdom and experience of legislators—some traditionalists, some reformers—who have enacted the laws which have sustained our Nation for over two centuries. In some mysterious way the system works. The authority and privileges vested in the majority have allowed the business of the House to proceed. Wisely, the various changes in the rules have retained that fragile but essential balance between the rights of the majority and the minority. The legislative process is not always neat and tidy; it is often inefficient and frequently frustrating. But in the mix of rules and precedents, there are parliamentary tools which make legislative victories possible. The importance of understanding these tools and learning how to use them justifies the publication of this work.

The scope of this work is limited: it is a summary review of selected precedents and not an exhaustive survey of all applicable rulings. The *House Rules and Manual* and the published volumes of House precedents remain the primary sources for in-depth analysis and for authoritative citations. This book has been conceived as a concordance or quick reference guide to those works. Hopefully, the alphabetical format and the synopses of precedents and citations on a given point of procedure will lead the reader to the primary authority for a definitive answer to a particular question.

An earlier work on the precedents is *Cannon's Procedure in the House of Representatives*, a summary by Clarence Cannon first published in 1949. A later summary was prepared by Lewis Deschler, Parliamentarian of the

House from 1928 to 1974: *Deschler's Procedure in the U.S. House of Representatives* (1974) which was revised and updated in 1977, 1979, 1982, 1985, and 1987 (Deschler-Brown). Comprehensive coverage and analysis is found in *Hinds' Precedents* (1907), *Cannon's Precedents* (1936), *Deschler's Precedents* (1977), and *Deschler-Brown Precedents* (1988).

The concept and format of this volume evolved after many discussions with Roy Miller of the Precedents Editing Office within the Office of the Parliamentarian. Roy also helped compile and edit much of the material. Deborah Khalili must be commended for unlocking the computer mysteries which permitted office keyboarding and a successful interface with the Government Printing Office. The Parliamentarian of the House, Charles W. Johnson III, and his Deputies Thomas Duncan and John Sullivan, and Assistants Muftiah McCartin and Thomas Wickham, committed a great deal of after-hours time to read and comment on the text. All of us hope that these combined efforts will provide Members a new perspective on and further understanding of the rules which provide the framework for their legislative efforts.

References to frequently cited works are to the *House Rules and Manual* for the 104th Congress, by section (e.g., *Manual* § 601); to the volume and section of Hinds or Cannon (e.g., 6 Cannon's Precedents § 200); to the chapter and section of Deschler or Deschler-Brown (e.g., Deschler Ch 12 § 16); to the *Congressional Record*, by Congress, session, date and page (e.g., 100–2, Sept. 30, 1988, p 27329), and to the United States Code, by title and section (e.g., 43 USC § 1649).

Wm. Holmes Brown
Parliamentarian
1974-1994

Chapter Outline

Chapter Outline—Continued

Adjournment

A. GENERALLY; ADJOURNMENTS OF THREE DAYS OR LESS

B. ADJOURNMENTS FOR MORE THAN THREE DAYS

C. ADJOURNMENT SINE DIE

Research References
5 Hinds §§ 5359–5388
8 Cannon §§ 2641–2648
Manual §§ 82–84, 782–784
U.S. Const. art. I § 5

A. Generally; Adjournments of Three Days or Less

§ 1. In General

Adjournment procedures in the House are governed by the House rules and by the U.S. Constitution. There are: (1) adjournments of three days or less, which are taken pursuant to motion; (2) adjournments of more than

three days, which require the consent of the Senate (§ 10, infra); and (3) adjournments *sine die*, which end each session of a Congress and which require the consent of both Houses. Adjournments of more than three days or *sine die* are taken pursuant to concurrent resolutions. §§ 10, 13, infra.

Adjournment is to be distinguished from recess; a recess is taken pursuant to authority granted by the House (Rule XVI clause 4) or, when no other business is pending, at the discretion of the Speaker (Rule I clause 12). During a period of recess, the House remains open for certain business: the mace remains in place on its pedestal and bills and reports may still be placed in the hopper. See RECESS.

§ 2. Adjournment Motions and Requests; Forms

Motions

The motion to adjourn is authorized by Rule XVI clause 4 and is in order in simple form only (5 Hinds §§ 5371, 5372), as follows:

MEMBER: Mr. Speaker, I move that the House do now adjourn.
Note: The motion must be in writing if demanded.
MEMBER: Mr. Speaker, I offer a privileged motion.
THE SPEAKER: The Clerk will report the motion.
THE CLERK: Mr. ____ moves that the House do now adjourn.

The proponent of the motion may not include argument in favor of the adjournment or impose conditions under which it is to be taken. 5 Hinds § 5371; 8 Cannon § 2647. And the motion may not be amended to set forth the day on which the House is to reconvene. § 6, infra. However the simple motion to adjourn may be preceded at the Speaker's discretion by a motion that when the House adjourns, it stand adjourned to a day and time certain. Rule XVI clause 4. *Manual* § 782. This motion is used when the House wishes to make some change in the day or hour of its next regularly scheduled meeting. (The hour of daily meeting of the House is scheduled in each Congress by standing order, *e.g.*, that it meet at 12 noon on Mondays and Tuesdays, 2 p.m. on Wednesdays, etc.) The House retains the right to vary from this schedule by use of the motion to adjourn to a day or time certain as provided in clause 4 of Rule XVI. See *Manual* § 621.

MEMBER: Mr. Speaker, I move that when the House adjourns today it stand adjourned to meet at _____(time) on _____(date).

The motion cannot be used to circumvent the constitutional restriction against adjournments for more than three days without the consent of the Senate.

Unanimous-Consent Requests

Adjournments of three days or less may be sought pursuant to a unanimous-consent request:

> MEMBER: Mr. Speaker, I ask unanimous consent that when the House adjourns today, it adjourn to meet at 10 a.m. on Friday, January 20, 19____ (or other day within three calendar days not including Sundays). (Adjournments of more than three days, see §§ 10–12, infra.)

Legislative Days and Calendar Days Distinguished

The duration of a legislative day does not conform to the 24 hours of a calendar day, nor does a legislative day automatically terminate by reason of the arrival of the time for a regularly scheduled meeting of the House. The legislative day continues until terminated by an adjournment, irrespective of the passage of calendar days. 5 Hinds §§ 6738, 6739. The House has convened and adjourned twice on the same calendar day pursuant to a motion to fix the day to which the House shall adjourn, thereby meeting for two legislative days on the same calendar day. 97–1, Nov. 17, 1981, p 27771; 100–1, Oct. 29, 1987, p 29933. However, a legislative day cannot extend into a new Congress or a new session. 96–1, Jan. 3, 1980, p 37774.

§ 3. When in Order; Precedence and Privilege of Motion

The motion to adjourn is a motion of highest privilege (see 5 Hinds § 5359; *Manual* § 783) and is in order whenever the floor can be secured. See 5 Hinds § 5360. Other motions may not intervene between the motion to adjourn and the vote thereon. 5 Hinds § 5361. The motion to adjourn is specifically given precedence over all other secondary motions permitted by Rule XVI clause 4, including the motions to lay on the table, for the previous question, to amend, to refer or to postpone. *Manual* § 782. The motion to adjourn takes precedence over all other motions because, as Jefferson noted, the House might otherwise be kept sitting against its will and indefinitely. *Manual* § 439.

The motion to fix the day and time to which the House shall adjourn is of equal privilege to the simple motion to adjourn but is entertained only at the Speaker's discretion (*Manual* § 782); the motion to fix the day, if made first, need not give way to the simple motion (5 Hinds § 5381).

The motion to adjourn may not interrupt a vote being taken in the House. 5 Hinds § 5360. But the motion to adjourn is in order:

- Between the putting of the question on a proposition and the ensuing vote. *Manual* § 439.
- Between the different methods of voting, as between a vote by division and a vote by yeas and nays. *Manual* § 439.

- After a recorded vote is ordered and before the vote begins. 5 Hinds § 5366.
- After a vote has been objected to for lack of a quorum. 97–1, Nov. 17, 1981, p 27770.

The motion to adjourn permitted by Rule XVI clause 4 applies when a question is ''under debate'' (*Manual* § 782), and is in order when other business is before the House as well. The motion is in order and takes precedence over the motions delineated in Rule XVI clause 4 and:

- The reading of the Journal. 4 Hinds § 2757.
- The Speaker's approval of the Journal. 100–1, Nov. 2, 1987, p 30386.
- A motion for a call of the House. 8 Cannon § 2642.
- Questions of privilege. 3 Hinds § 2521.
- Resolutions offered as a question of the privileges of the House. *Manual* § 661a.
- The consideration of an impeachment proceeding. 91–2, Apr. 15, 1970, p 11940.
- A motion to suspend the rules. 8 Cannon § 2823; 102–2, Aug. 11, 1992, p ____.
- A motion to reconsider. 5 Hinds § 5605; 96–1, Sept. 20, 1979, p 25512.
- A motion to instruct conferees. 96–2, May 29, 1980, p 12717–19.
- The filing of a privileged report from a committee. 99–1, Apr. 29, 1985, p 9699.
- The consideration of conference reports. 5 Hinds §§ 6451, 6453.
- A report from the Committee of the Whole. 8 Cannon § 2645.
- The consideration of a veto message from the President. 4 Hinds § 3523.

When Not in Order

The motion to adjourn does not take precedence and may be ruled out:

- When another Member holds the floor in debate. 5 Hinds § 5360; *Manual* § 783.
- During time yielded for a parliamentary inquiry. 88–2, June 3, 1964, p 12522.
- When the House is voting (5 Hinds § 5360), such as by the yeas and nays or other recorded vote (5 Hinds § 6053).
- Pending a vote pursuant to a special order providing for such vote ''without intervening motion.'' 4 Hinds §§ 3211, 3212.
- During the presentation of a conference report. 5 Hinds § 6452.
- Pending or during the administration of the oath to a Member. 1 Hinds § 622.

In certain situations, the motion cannot be repeated after one such motion has been negatived. See § 9, infra. Repetition is not permitted:

- Pending consideration of a report from the Committee on Rules, after one motion to adjourn has been negatived. Rule XI clause 4(b). 8 Cannon § 2260.
- Pending consideration of a motion to suspend the rules, after one such motion has been acted on. Rule XVI clause 8.

§ 4. In Committee of the Whole

The motion to adjourn is not in order after the House has voted to go into the Committee of the Whole. 4 Hinds § 4728; 5 Hinds § 5367. The motion is not in order in Committee of the Whole (4 Hinds § 4716), and is not entertained when the Committee of the Whole rises to report proceedings incident to securing a quorum (8 Cannon § 2436) or when it rises ''informally'' to receive a message. But the motion to adjourn is permitted when the House is meeting *as in* the Committee of the Whole. 4 Hinds § 4923.

§ 5. Who May Offer Motion; Recognition

The motion to adjourn is generally offered by the Majority Leader or his designee, but the motion can be made by any Member (91–1, Oct. 14, 1969, pp 30054–56) including a minority member. 98–1, Nov. 4, 1983, p 30946; 98–2, May 23, 1984, p 13960. A Member may move to adjourn whenever he can secure the floor, but he may not move to adjourn while another Member has been recognized for debate. 5 Hinds §§ 5369, 5370. The motion is not in order where the Member has been yielded to or recognized for a parliamentary inquiry. 8 Cannon § 2646.

§ 6. Debate on Motion; Amendments

Debate on the simple motion to adjourn is precluded by Rule XVI clause 4 (*Manual* § 782). 5 Hinds § 5359. The same rule precludes debate on the motion to fix the day to which the House shall adjourn. *Manual* § 782. 5 Hinds §§ 5379, 5380. Debate on resolutions providing for an adjournment, see § 10, infra.

The simple motion to adjourn is not subject to amendment. *Manual* § 585. Thus the motion may not be amended by language alluding to the purpose of the adjournment. *Manual* § 783. Nor may the motion be amended by language specifying the day (5 Hinds § 5360) or hour (5 Hinds § 5364) to which adjournment is to be taken. Such amendments are ruled out whenever the House is operating under its customary standing order that fixes

the daily hour of meeting for each day of the week. *Manual* § 783. However, the rules permit a separate motion at the Speaker's discretion that when the House adjourns it stand adjourned to a day and time certain (§ 2, supra), and this motion is subject to amendment. 5 Hinds § 5754.

§ 7. Voting

The vote on a motion to adjourn may be taken by any of the voting methods authorized by the House rules, including a division vote (99–1, Dec. 20, 1985, p 38733) or a vote by the yeas and nays. 86–2, June 3, 1960, p 11828; 88–2, Feb. 8, 1964, pp 2616, 2639. The adoption of a resolution providing for adjournment *sine die* on a day certain does not preclude a demand for the yeas and nays on the motion to adjourn on that day. 87–1, Sept. 27, 1961, p 21528. A negative vote on a motion to adjourn is not subject to the motion to reconsider. 5 Hinds §§ 5620, 5622. See also RECONSIDERATION.

§ 8. Quorum Requirements

A quorum is required for a motion to fix the time of adjournment to a day and time certain. 91–1, Oct. 14, 1969, pp 30054–56; 94–1, June 19, 1975, pp 19789, 19790; 94–2, June 22, 1976, p 19755.

The simple motion to adjourn may be agreed to notwithstanding the absence of a quorum. See *Manual* §§ 52, 773. Indeed, no motion is in order in the absence of a quorum except to adjourn or for a call of the House. 4 Hinds §§ 2950, 2951, 2988; 6 Cannon §§ 680, 682. The motion to adjourn is in order on failure of a quorum even where the House is operating under a special order requiring the consideration of the pending business. 5 Hinds § 5365.

Since the motion to adjourn takes precedence of a motion for a call of the House (§ 3, supra), where a point of order is made that a quorum is not present and a call of the House is then moved, a Member may immediately move to adjourn, and the Chair may recognize for the higher privileged motion. 88–1, June 12, 1963, p 10739.

It is not in order to demand an ''automatic'' roll call under Rule XV clause 4 on an affirmative vote on a simple motion to adjourn, since that motion may be agreed to by less than a quorum. 98–1, Nov. 4, 1983, p 30946. But a vote by the yeas and nays in such a case would be in order, if demanded by one-fifth of those present, no quorum being required. *Manual* §§ 75, 76. Where the vote on an adjournment is decided in the negative, and a point of order that a quorum is not present is sustained, an ''auto-

matic'' roll call on the motion then occurs under Rule XV clause 4. 100–1, Nov. 2, 1987, pp 30386–90. See also *Manual* § 773.

MEMBER: I move that the House do now adjourn.

SPEAKER: On this vote (by division, or by voice) the noes have it.

MEMBER: I make a point of order that a quorum is not present and (pursuant to clause 4 of Rule XV) I object to the vote on that ground.

SPEAKER: A quorum is not present, and the yeas and nays are ordered. Members will record their votes by electronic device.

While a motion to adjourn is in order pending a point of order that a quorum is not present, it is not entertained after the Clerk has commenced to call the roll. 86–2, June 3, 1960, p 11828. After the call has been completed, the motion to adjourn is again in order, and it is not necessary that the Chair announce that a quorum has failed to respond before entertaining the motion. 91–1, Oct. 14, 1969, pp 30054–56.

§ 9. Dilatory Motions; Repetition of Motion

The House rule that requires the Speaker to refuse to entertain dilatory motions (Rule XVI clause 10) is applicable to motions to adjourn. *Manual* § 803. Although of the highest privilege, the motion to adjourn is not in order when offered for purposes of delay or obstruction. 5 Hinds §§ 5721, 5731; 8 Cannon §§ 2796, 2813. On one occasion, a point of order was sustained against the motion where a House rule gave the Speaker the discretion to recognize for a motion to adjourn. 8 Cannon § 2822.

The motion to adjourn, once offered, may ordinarily be repeated, but not until after intervening business (5 Hinds § 5373; 8 Cannon § 2814), debate (5 Hinds § 5374), a decision of the Chair on a question of order (5 Hinds § 5378), or the ordering of the yeas and nays (5 Hinds §§ 5376, 5377). *Manual* § 783.

In some cases the rules specifically provide that only one motion to adjourn is to be permitted; this restriction applies during the consideration of reports from the Rules Committee (*Manual* § 729a) and during the consideration of motions to suspend the rules (*Manual* § 801). In such cases the motion to adjourn—once having been rejected—may not again be entertained until the pending matter has been fully disposed of. 5 Hinds §§ 5740, 5741. However, if a motion to adjourn is made and rejected, and a quorum then fails, a second motion to adjourn is admitted. 5 Hinds §§ 5744–5746.

B. Adjournments for More Than Three Days

§ 10. In General; Resolutions

House-Senate Action

Under the Constitution, neither House can adjourn for more than three days without the consent of the other. U.S. Const. art. I § 5. The consent of both Houses is required even though the adjournment is sought by only one of them. See 91–1, Nov. 6, 1969, pp 33345 *et seq.*; 94–2, Sept. 1, 1976, p 28860. In calculating the three days, either the day of adjourning or the day of meeting (excluding Sundays) must be taken into the count. *Manual* § 83; 5 Hinds § 6673. The House can adjourn by motion from Thursday to Monday (since Sunday is a *dies non)*; but it cannot adjourn from Monday to Friday without the Senate's assent.

Adjournments for more than three days are provided for by concurrent resolution. 88–2, Aug. 21, 1964, p 20813; 90–2, Apr. 10, 1968, p 9621; 101–2, May 24, 1990, p ____. The resolution may provide for the adjournment of one House (100–1, Aug. 7, 1987, p 23072) or for the adjournment of both Houses (100–1, Apr. 9, 1987, p 8567). Senate concurrent resolutions for adjournment are laid before the House by the Speaker as privileged. 101–1, Mar. 16, 1989, p 4480. Such resolutions, whether originating in the House or Senate, are not debatable. *Manual* § 84. They require a quorum for adoption.

The concurrent resolution is generally offered by the Majority Leader or his designee:

> MEMBER: Mr. Speaker, I offer a privileged concurrent resolution (H. Con. Res. ____) providing for an adjournment of the House from _____ to _____ and a recess or adjournment of the Senate from _____ to _____, and ask for its immediate consideration.

The resolution may set forth the times at which the adjournment is to begin and end, but frequently the resolution will provide optional dates so as to give each House some discretion in determining the exact period of adjournment. 100–2, July 13, 1988, p 18069; 101–2, May 24, 1990, p ____. Sometimes the resolution has provided for a certain period of adjournment of the House and a different period for the Senate. Thus the resolution may provide for an adjournment of the House for more than three days to a day certain, and a recess of the Senate for more than three days to a day certain as subsequently determined by the Senate before recessing. 95–2, Mar. 22, 1978, p 7942. As to the authority of the President to determine the period

of adjournment when the two Houses are unable to agree with respect thereto, see U.S. Const. art. II § 3. Convening, see ASSEMBLY OF CONGRESS.

Conditional Adjournments; Recall Provisos

An adjournment resolution may include various conditions or provisos, such as that the Senate shall adjourn pursuant to the resolution after it has disposed of a certain bill. 95–2, June 29, 1978, p 19466.

A concurrent resolution adjourning both Houses for more than three days may include a proviso that the House is subject to recall by the Speaker if legislative expediency so warrants. 91–2, July 20, 1970, p 24978. More frequently, recall authority is given to the Speaker and to the Majority Leader of the Senate, acting jointly, to reassemble the Members whenever the public interest warrants. See 101–1, June 23, 1989, p 13271; 101–2, Apr. 4, 1990, p ____. The authority may be vested in other members of the leadership in the two bodies.

Amendments; Voting

Adjournment resolutions originating in one House are subject to amendment by the other. 95–2, June 29, 1978, p 19466; 95–2, Aug. 17, 1978, p 26794. Such an amendment is not in order after the previous question is ordered (except pursuant to a motion to commit with instructions). 96–2, Oct. 1, 1980, p 28576. Voting on the motion may be by voice, division, or any of the methods of voting established by Rule I clause 5 or by the Constitution (art. I § 5).

§ 11. Privilege of Resolution

A concurrent resolution providing for an adjournment of the House or of the Senate (or of both Houses) is called up as privileged. 5 Hinds § 6701; 92–1, Oct. 18, 1971, p 36492; 93–1, Oct. 2, 1973, p 32371; 93–2, June 27, 1974, p 21632. The resolution is privileged even though it provides for an adjournment of the two Houses to different days certain. 93–1, Feb. 8, 1973, p 3908; 93–2, Apr. 11, 1974, p 10775. An adjournment resolution remains privileged despite its inclusion of additional matter so long as such additional matter would be privileged in its own right (*e.g.*, a declaration asserted as a question of the privileges of the House relating to the ability of the House to receive veto messages during the adjournment). 101–1, Nov. 21, 1989, p ____. An adjournment resolution also establishing an order of business for the following session of the Congress was not considered privileged. 102–1, Nov. 26, 1991, p ____.

Amendments to adjournment resolutions are called up as privileged. 97–2, Feb. 10, 1982, p 1471.

A House concurrent resolution providing for an adjournment may lose its privileged status if the House is not in compliance with those provisions of the Congressional Budget Act [§§ 309, 310(f)] precluding such resolutions until the House has approved its regular appropriations bills and completed action on any required reconciliation legislation. See 100–1, July 9, 1987, p 19131. However, these provisions of the Act may be waived by unanimous consent. 99–2, June 19, 1986, p 14644; 101–1, June 23, 1989, p 13271.

§ 12. August Recess

The Legislative Reorganization Act of 1970 provides that unless otherwise provided by Congress, the two Houses shall either (a) adjourn *sine die* by July 31 of each year, or (b) in odd-numbered years, adjourn in August (for a specified period) pursuant to a concurrent resolution adopted by roll call vote in each House. 2 USC § 198. The House has not adjourned *sine die* by July 31 under this Act for many years, and the provisions in the Act to that effect have been routinely waived by concurrent resolution, thereby permitting the two Houses to continue in session. 98–2, July 26, 1984, p 21339. See also 97–2, July 29, 1982, p 18563. In the absence of such a resolution, a simple motion to adjourn, made at the conclusion of business on July 31, is in order and would permit the House to meet on the following day. *Manual* § 948.

The House and Senate may adopt a concurrent resolution adjourning in August in an odd-numbered year as specified by the Act. 92–1, July 30, 1971, p 28332. Such a resolution is called up as privileged, requires a yea and nay vote for adoption, and is not debatable. 102–1, July 31, 1991, p ____. Concurrent resolutions waiving the provisions of the Act are not privileged and are called up by unanimous consent. 100–1, July 29, 1987, p 21459.

C. Adjournment Sine Die

§ 13. In General; Resolutions

Adjournments *sine die* (literally, without day) are used to terminate the sessions of a Congress, and are provided for by concurrent resolution. A session terminates automatically at the end of the constitutional term. See termination of 96–1, Jan. 3, 1980, p 37774. Such adjournments are generally taken in October in even-numbered years (election years) and usually somewhat later in odd-numbered years. Adjournment resolutions may be called

up from the floor as privileged. 5 Hinds § 6698; 100–1, Dec. 21, 1987, p 37618; 100–2, Oct. 21, 1988, p 33319. A Member, usually the Majority Leader, rises:

> Mr. Speaker, I offer a privileged concurrent resolution (H. Con. Res. ____) and ask for its immediate consideration.
>
> *Resolved by the House of Representatives (the Senate concurring),* That the two Houses of Congress shall adjourn on (the legislative day of) Tuesday, Dec. ____, 19____, and that when they adjourn on said day, they stand adjourned *sine die*.

The resolution is not debatable (8 Cannon §§ 3371–3374), though a Member may be recognized during its consideration under a reservation of objection to a unanimous-consent request. 101–2, Oct. 27, 1990, p ____. It requires a quorum for adoption. 92–2, Oct. 18, 1972, p 37061.

A *sine die* resolution normally specifies the particular day of adjournment, but may specify two or more optional dates (98–1, Nov. 16, 1983, p 33123), or a legislative day if the final day is expected to last beyond midnight. *Sine die* resolutions may be amended to provide for an adjournment on a date other than that specified. 98–2, Oct. 11, 1984, p 32314. The resolution need not specify the date of convening because, under section 2 of the 20th amendment to the U.S. Constitution (*Manual* § 242), a regular session of a Congress automatically begins at noon on January 3 of every year unless Congress sets a different date by law. 96–2, Jan. 3, 1980, p 3.

The Committee on Rules has jurisdiction of matters relative to final adjournment of Congress [clause 1(a)(3) of Rule X]. *Manual* § 948.

The time of adjournment *sine die* having been fixed by concurrent resolution, the House may not finally adjourn before that time. 5 Hinds § 6714. But *sine die* resolutions may be recalled prior to action thereon by the other House (5 Hinds § 6699) and are subject to rescission by a subsequent concurrent resolution (5 Hinds § 6700). A resolution rescinding an order for adjournment *sine die* is open to amendment and an amendment assigning a new date is germane. 5 Hinds § 5920. Waiver of statutory provision as to adjournment *sine die* on July 31, see § 12, supra.

Under the current practice, *sine die* adjournment resolutions usually contain House-Senate leadership recall authority. Recall authority generally, see § 10, supra.

The House customarily authorizes the Speaker to appoint a committee to notify the President of the completion of business and the intention of the two Houses to adjourn *sine die* unless the President has some further communication to make. 100–1, Dec. 21, 1987, p 37618; 92–2, Oct. 18, 1972, p 37051. This committee is usually composed of the Majority and Mi-

nority Leaders of the House, and joins a similar committee appointed by the Senate. 93–2, Dec. 20, 1974, p 41855.

§ 14. Procedure at Adjournment; Motions

The House may adjourn at the time specified in the adjournment resolution even though other business, such as a roll call, may be pending. 5 Hinds §§ 6325, 6719, 6720. Adjournment *sine die* is in order notwithstanding the absence of a quorum if both Houses have adopted a concurrent resolution providing for *sine die* adjournment on that day. 5 Hinds § 6721; *Manual* § 55.

The time for adjournment specified in the resolution having arrived, the motion to adjourn is made by the Majority Leader or his designee (101–1, Nov. 21, 1989, p ____):

> Mr. Speaker, in accordance with House Concurrent Resolution ____, I move that the House do now adjourn.

The yeas and nays may be ordered on this motion. The adoption of a concurrent resolution providing for adjournment *sine die* on a day certain does not preclude a demand for the yeas and nays on the motion to adjourn on that day. 87–1, Sept. 27 [Legislative Day, Sept. 25], 1961, p 21528.

Amendments

A. Amendments Defined and Distinguished; Forms

B. Permissible Pending Amendments

C. When to Offer Amendment; Reading for Amendment

D. Offering Particular Kinds of Amendments; Precedence and Priorities

E. CONSIDERATION AND VOTING

F. EFFECT OF ADOPTION OR REJECTION; CHANGES AFTER ADOPTION

G. HOUSE CONSIDERATION OF AMENDMENTS REPORTED FROM COMMITTEE OF THE WHOLE

H. AMENDMENTS TO TITLES AND PREAMBLES

I. AMENDMENTS CONTAINING UNFUNDED MANDATES

Research References

5 Hinds §§ 5753–5800

8 Cannon §§ 2824–2907a
9 Deschler Ch 27
Manual §§ 413, 456, 469, 775, 777, 782, 793, 822, 823, 825, 826, 854, 870, 872–875

A. Amendments Defined and Distinguished; Forms

§ 1. In General; Formal Requisites

Generally

The four forms of amendment are specified by Rule XIX. They are:

- The amendment to the pending proposition
- Amendments to the amendment
- Substitute amendments
- Amendments to the substitute

An amendment to a pending amendment is in order as an amendment in the second degree, as is an amendment to a pending substitute. Amendments in the third degree are not in order. § 14, infra.

The amendment to the original text must, of course, be offered first, and generally only one amendment to the text may be pending at any one time. 5 Hinds § 5755; Deschler Ch 27 § 1. Once that amendment is offered, however, the other three forms of amendment may be offered and all four amendments may be pending at one time. 5 Hinds §§ 5753, 5785; 8 Cannon §§ 2883, 2887; Deschler Ch 27 § 1. See also § 13, infra.

Recognition for the purpose of offering amendments is within the discretion of the Chair. See § 20, infra. A Member may offer an amendment in his own name at the request of another Member, but he may not offer it in the other Member's name. Deschler Ch 27 § 1.11. And he may not offer an amendment to his own amendment; an amendment once offered may not be modified by its proponent except by unanimous consent. § 37, infra.

Formal Requirements; Written or Oral Motions

Pursuant to the House rules (Rule XVI clause 1), the Chair or any Member may require that an amendment be reduced to writing before being offered. Deschler Ch 27 § 1.1. In Committee of the Whole, the Clerk transmits copies of offered amendments to the majority and the minority tables in accordance with the House rules (Rule XXIII clause 5(a)), although the failure of the Clerk to promptly transmit such copies is not the basis for a point of order against the amendment. Deschler Ch 27 § 22.11.

An amendment must contain instructions to the Clerk as to the portion of the bill it seeks to amend. Deschler Ch 27 § 1.28. Similarly, an amendment to an amendment should specify and identify the text to be amended. Amendments to a substitute should be drafted to the proper page and line number of the substitute rather than to comparable provisions of the original text. Deschler Ch 27 §§ 1.9, 1.10. A Member who intends to propose such an amendment may ascertain the appropriate page and line number by inspecting the pending amendment at the Clerk's desk or obtaining a copy thereof at the committee tables. Deschler Ch 27 § 22.10.

The Chair may examine the form of an offered amendment to determine its propriety and may rule it out of order even where no point of order is raised from the floor, and debate has begun. Deschler Ch 27 § 1.39. However, an ambiguity in the wording of an amendment, or a question as to the propriety of draftsmanship of an amendment to accomplish a particular legislative purpose, should not be questioned on a point of order; that is an issue to be disposed of on the merits. Deschler Ch 27 § 1.31.

Order or Sequence

A distinction should be made between the order or sequence of voting on amendments and the sequence in which they may be offered. Amendments must be voted on in a definite sequence. The amendment to the text is voted on last, thereby giving the Members the fullest opportunity to perfect it before addressing its adoption. (Order of voting on amendments, see § 28, infra.) But this sequence is reversed with respect to the *offering* of amendments, since amendments to the text are proposed before the offering of amendments to the amendment, and substitute amendments must precede the offering of amendments to the substitute. §§ 21 *et seq.*, infra. Nevertheless, considerable latitude is permitted in the order of offering amending propositions. Thus, in one instance in 1975, five amendments were offered in the following order: (1) an amendment in the nature of a substitute for the pending text, (2) a substitute therefor, (3) perfecting amendments to the original text, (4) an amendment to the substitute, and (5) an amendment to the amendment in the nature of a substitute. Deschler Ch 27 § 5.28.

Effect of Special Rule

Bills are frequently considered pursuant to the terms of a special rule or resolution reported from the Committee on Rules which specifies whether amendments may be offered to the bill, the kind and number of amendments that may be offered, whether they can be amended, and the order of consideration and voting thereon. § 11, infra. Such special rules are themselves subject to germane amendment while the rule is pending if the Member in

control yields for such amendment or if he offers the amendment himself, or if the previous question is voted down. Deschler Ch 27 § 3.1.

§ 2. Perfecting Amendments

Generally

Generally, the House follows the Jeffersonian principle that language should be perfected before taking other action on it. *Manual* § 456. The term ''perfecting amendment'' includes amendments to insert as well as amendments to strike out and insert. Deschler Ch 27 § 15. And a perfecting amendment may take the form of a motion to strike out a lesser portion of the words encompassed in a pending motion to strike. Deschler Ch 27 § 15.17. There are no degrees of preference as between perfecting amendments. Deschler Ch 27 § 5.9.

A perfecting amendment may be offered to the text of a bill or to an amendment to a bill. Once a perfecting amendment to an amendment is disposed of, the original amendment, as amended or not, remains open to further perfecting amendment, and all such amendments are disposed of prior to voting on substitutes. Deschler Ch 27 § 23.9.

Perfecting Amendments and the Motion to Strike

Perfecting amendments to a section or paragraph may be offered—one at a time—while a motion to strike out the section or paragraph is pending, and are first disposed of. Deschler Ch 27 § 15.15. Indeed, all perfecting amendments to a section of a bill must be disposed of prior to the vote recurring on a pending motion to strike out the section. Deschler Ch 27 § 24.2. And if the perfecting amendment changes all the words proposed to be stricken out, the motion to strike necessarily falls and is not voted on. Deschler Ch 27 § 24.15.

§ 3. Motions to Insert

A motion to insert may be pending at the same time as a motion to strike, with the vote taken first on the motion to insert, then on the motion to strike. They need not be offered in the order in which they are voted on. Deschler Ch 27 § 15.1.

It is not in order to reinsert the precise language stricken by amendment. Deschler Ch 27 § 31.4. But an amendment similar to the stricken language may be offered if germane to the pending portion of the bill. Deschler Ch 27 § 31.6.

After an amendment to insert has been agreed to, the matter inserted ordinarily may not then be amended (5 Hinds § 5761; 8 Cannon § 2852) in

any way that would solely change its text. However, an amendment may be added at the end of the inserted material. 5 Hinds § 5759; *Manual* § 469. See § 38, infra.

§ 4. Motions to Strike and Insert

A motion to strike out and insert is usually a perfecting amendment (Deschler Ch 27 § 16), and is not divisible. Rule XVI clause 7. A motion to strike out and insert may be offered as a perfecting amendment to a pending section of a bill, and is voted on before a pending motion to strike that section. But, even if agreed to, the perfected language is subject to being eliminated by subsequent adoption of the motion to strike out in cases where the perfecting amendment has not so changed the text as to render the original motion to strike meaningless. Deschler Ch 27 § 17.12 (note).

§ 5. Motions to Strike

A motion proposing to strike out a section of a bill is in order after perfecting amendments to the section are disposed of. If offered first, the motion to strike is held in abeyance until perfecting amendments have been disposed of. § 21, infra. A motion proposing to strike out a section which has been perfected, but not changed in its entirety, is in order. Deschler Ch 27 § 17.29. The motion to strike, if adopted, strikes the entire section including provisions added as perfecting amendments to that section. Deschler Ch 27 § 31.1.

A motion to strike out the enacting clause of a bill is a parliamentary motion used for rejecting the bill. Deschler Ch 27 § 15. It takes precedence over a motion to amend the bill. Rule XXIII clause 7. *Manual* § 875.

§ 6. Substitute Amendments

A ''substitute'' is a substitute for an amendment and not a substitute for the original text. Deschler Ch 27 § 18.1. See also 8 Cannon § 2883. If a substitute amendment is adopted, the question recurs on the amendment as amended by the substitute; but if the substitute is rejected, the amendment is open to further amendment. Deschler Ch 27 §§ 25.1, 32.18. Substitute amendments are under Rule XIX first degree amendments and as such are themselves subject to amendment. Deschler Ch 27 § 15.29.

A substitute for an amendment is in order so long as it is germane thereto and proposes to make some change in the original language being amended or in the amendment itself. 93–2, July 22, 1974, pp 24450, 24451, 24453. To qualify as a substitute, however, an amendment must treat in the same manner the same subject carried by the amendment for which it is of-

fered. 8 Cannon § 2879. Thus, a proposition not only inserting similar language but also striking out original text from the bill may be ruled out of order as a substitute—if it has the effect of broadening the scope of the pending amendment in violation of the germaneness rule. Deschler Ch 27 § 18.6.

A substitute for a motion to strike out is not in order. Deschler Ch 27 § 18.8. Nor is a motion to strike out in order as a substitute for a pending motion to strike out and insert (Deschler Ch 27 § 17.18) or for a perfecting amendment to text generally (Deschler Ch 27 § 17.17).

A proposition contained in a substitute may sometimes be reoffered in a different form after it has failed of approval. 8 Cannon § 2843.

A Member may not offer a substitute for his own amendment to a bill. Deschler Ch 27 § 18.22.

§ 7. Amendments in Nature of a Substitute

An amendment in the nature of a substitute is an amendment which is offered to the text of a bill; it generally replaces the entire bill. It should be distinguished from a substitute amendment, which is merely a substitute for another amendment that has been offered. Deschler Ch 27 § 12.

An amendment in the nature of a substitute takes the form of a motion to strike out and insert. But the term ''amendment in the nature of a substitute'' properly applies only to those motions which propose to strike out an entire pending bill, though it is sometimes used, less precisely, to describe motions proposing to strike out an entire pending section or title of text and to insert new matter. It should not be used to describe those motions to strike out and insert which are properly characterized as ''perfecting amendments'' and which go only to a portion of the pending text. Deschler Ch 27 § 25. An amendment in the nature of a substitute for a pending bill may be offered after the first section is read and is then open to amendment in its entirety. Deschler Ch 27 § 12.

An amendment in the nature of a substitute for a bill may be proposed before perfecting amendments to the pending portion of the original text have been offered, but may not be voted on until after such perfecting amendments have been disposed of. 8 Cannon § 2896; Deschler Ch 27 § 25.

Where an amendment in the nature of a substitute for a bill has been adopted in Committee of the Whole, the stage of amendment is passed and further amendments, including pro forma amendments for debate, are not in order except by unanimous consent. Deschler Ch 27 § 32.6. See also *Manual* § 823.

§ 8. Pro Forma Amendments

Pro forma amendments have been in use during debate under the five-minute rule since as early as 1868. 5 Hinds § 5778. A pro forma amendment is a procedural formality—a parliamentary device used to obtain recognition during consideration of a bill being read for amendment. Such an amendment does not contemplate any actual change in the bill. While pro forma amendments are phrased to make some superficial change in the language under consideration, such as ''to strike the last word,'' the underlying purpose is merely to obtain time for debate which might otherwise be prohibited because of the time limitations of the five-minute rule (Rule XXIII clause 5). Deschler Ch 27 § 2. Nevertheless, a pro forma amendment must be voted on unless withdrawn. 8 Cannon § 2874; *Manual* § 873a.

A Member who has occupied five minutes on a pro forma amendment:

- May not lengthen this time by making another pro forma amendment. 5 Hinds § 5222; 8 Cannon § 2560.
- May not extend this time by offering a substantive amendment while other Members are seeking recognition. *Manual* § 873a.
- May rise in opposition to a pro forma amendment offered by another Member when recognized for that purpose. Deschler Ch 27 §§ 2, 2.21 (note).

Debate on a pro forma amendment must be confined to the portion of the bill to which the pro forma amendment has been offered. Deschler Ch 27 §§ 2.5, 28.38. If the point of order is raised, a Member may not under a pro forma amendment discuss a section of the bill not immediately pending. Deschler Ch 27 § 2.4.

A Member recognized to debate a pro forma amendment may not allocate or reserve time. 103–2, July 13, 1994, p ____.

§ 9. Precedence of Motion Generally

In General

A House rule specifies the motions that are in order when a question is under debate in the House and assigns precedence to those motions in the order named in the rule. The motion to amend is listed in the fourth position, taking precedence over the motion to postpone indefinitely. Under the rule, the motion to amend yields to the motion to adjourn, to lay on the table, for the previous question, to postpone to a day certain, and to refer. Rule XVI clause 4. *Manual* § 782. Since the motion to refer takes precedence over the motion to amend (5 Hinds § 5555), the motion to amend is not entertained while the motion to refer is pending (6 Cannon § 373).

Explaining or Opposing an Amendment

In Committee of the Whole, under the five-minute rule where an amendment is offered, the initial 10 minutes of debate—five for the proponent to explain the amendment, five for a speech in opposition—takes precedence over a motion to amend it. 4 Hinds § 4751.

The Previous Question

In the House, a motion for the previous question takes precedence over a motion to amend. 8 Cannon § 2660; 90–1, Mar. 1, 1967, p 5038; 92–1, Nov. 8, 1971, p 39944; 96–1, July 24, 1979, p 20385. See also *Manual* § 825. Thus, the previous question may be moved pending the offering of an amendment by a Member to whom the floor was yielded for that purpose, and the previous question must be voted down before that Member is recognized to offer the amendment. 92–1, Nov. 8, 1971, p 39944. The previous question having been voted down, an amendment may be offered, but if the amendment is ruled out on a point of order, the previous question may again be moved and takes precedence over the offering of another amendment. 91–1, Jan. 3, 1969, pp 25–27.

Once the proponent of an amendment has been recognized for debate, he may not be taken from the floor by another Member seeking to move the previous question. 90–2, May 8, 1968, p 12262. And a Member recognized to debate a pro forma amendment may not be taken from the floor by the motion for the previous question. 92–2, May 8, 1972, pp 16154, 16157.

The Motion to Strike the Enacting Clause

The motion to strike out the enacting clause takes precedence over a motion to amend (8 Cannon §§ 2622, 2628) and may be offered while an amendment is pending (5 Hinds § 5328; 8 Cannon § 2624). See also 94–1, Apr. 23, 1975, p 11513. However, the rejection of a preferential motion to strike the enacting clause permits the offering of proper amendments and this is so notwithstanding expiration of all debate time on the bill. 98–1, July 29, 1983, pp 21675, 21676. In the House, the motion is in the following form:

> Mr. _____ moves to strike out the enacting clause (or the resolving clause) of the bill.

In the Committee of the Whole, the motion must be phrased as a recommendation, since only the House can directly reach the enacting clause.

> Mr. _____ moves that the Committee rise and report the bill back to the House with the recommendation that the enacting clause be stricken.

In the Committee of the Whole, the motion is subject to debate under the five-minute rule. Only two five-minute speeches are in order, one in favor of, one in opposition to, the motion. While the motion to strike out the enacting clause is pending, not even the pro forma amendment to strike out the last word is entertained. 8 Cannon § 2627.

For general discussion of the motion to strike the enacting clause, see COMMITTEE OF THE WHOLE.

The Motion to Rise

With one exception, in Committee of the Whole a motion to amend a bill has precedence over a motion to rise and report it to the House (4 Hinds §§ 4752–4758), but yields to the simple motion that the Committee rise (4 Hinds § 4770). Where a general appropriation bill has been completely read for amendment, a motion to rise and report, if offered by the Majority Leader (or designee), takes precedence over an amendment proposing a limitation. See Rule XXI clause 2(d). *Manual* § 834d.

Precedence as between particular forms of amendment, see § 21, infra.

§ 10. Amending Other Motions

Generally

The motion to amend may be applied, with certain exceptions, to other motions that are in order in the House or the Committee of the Whole. 5 Hinds § 5754; *Manual* § 826. Unless precluded by the operation of the previous question, the motion to amend may be applied to a motion:

- To postpone (5 Hinds § 5754; 8 Cannon § 2824).
- To amend (5 Hinds § 5754).
- To refer (5 Hinds § 5754).
- To recommit (5 Hinds § 5521; 8 Cannon §§ 2695, 2738, 2762). See also 91–1, Aug. 11, 1969, p 23143.
- To recommit with instructions (8 Cannon §§ 2698, 2699, 2712, 2759).
- For a recess (5 Hinds § 5754).
- To fix the day to which to adjourn (5 Hinds § 5383).
- To instruct conferees (8 Cannon §§ 3231, 3240; 90–2, May 29, 1968, p 15499).
- To change the reference of a public bill if the amendment is authorized by the appropriate committee (7 Cannon § 2127; *Manual* § 854. But see 4 Hinds § 4378).

When Not Permitted

A motion to amend may not be applied to a motion:

- For the previous question (*Manual* § 452).
- To table (5 Hinds § 5754).

- To suspend the rules (5 Hinds §§ 5405, 6858, 6859), although a motion to suspend the rules and pass a measure may include a proposed amendment to the measure (99–1, June 4, 1985, p 13986).
- To adjourn (5 Hinds § 5754), as by specifying a particular day (5 Hinds § 5360).
- To go into the Committee of the Whole to consider a privileged bill (6 Cannon §§ 52, 724; *Manual* § 826).
- To take up a designated bill in the Committee of the Whole (8 Cannon § 2865).
- To strike out the enacting clause (8 Cannon § 2626).

An amendment may not be offered to a motion against which a point of order is pending. See POINTS OF ORDER. For discussion of the general rule that the motion to amend is not in order on questions on which the previous question is operating, see PREVIOUS QUESTION. Amendments to conference reports, see CONFERENCES BETWEEN THE HOUSES.

§ 11. Effect of Special Rule

Bills are frequently considered pursuant to the terms of a special rule or resolution reported from the Committee on Rules which specifies whether amendments may be offered to the bill, the kind and number of amendments that may be offered, and the order of consideration and voting thereon. Deschler Ch 27 § 3. The Committee on Rules may report a resolution providing procedures to govern the consideration of a measure even where the measure is already pending in Committee of the Whole. Deschler Ch 27 § 3.77. See also SPECIAL RULES.

Legislation may be considered:

- Under an ''open'' rule, which places no restrictions on amendment.
- Under a ''closed'' rule, which limits amendments, e.g., to those proposed by the reporting committee.
- Under a rule that is ''open in part'' or ''closed in part.''
- Under a ''modified open or closed'' rule combining features of the foregoing.

Where a bill is being considered in the Committee of the Whole under an ''open'' rule, germane amendments to the bill are in order under the standing rules of the House. Deschler Ch 27 § 3.7. Where a bill is being considered under a ''closed'' rule permitting only committee amendments and no amendments thereto, even pro forma amendments are not in order. Deschler Ch 27 § 3.34.

A ''modified closed rule'' sometimes permits only designated amendments (93–1, Dec. 10, 1973, p 40489 [H. Res. 657]); or it may prohibit the consideration of amendments relating to a particular subject, such as amend-

ments restricting use of funds for abortions (95–2, June 7, 1978, p 16657 [H. Res. 1220]).

The Committee of the Whole may not substantively restrict the offering of amendments in contravention of a special rule adopted by the House. 99–1, June 25, 1985, p 17201; Deschler Ch 27 § 3; *Manual* § 887a. A unanimous-consent request may be entertained in Committee of the Whole by the Chair if its effect is to allow procedures which differ only in minor or incidental respects from the procedure required by a special rule adopted by the House. Of course, the House may, by unanimous consent, delegate to the Committee of the Whole authority to entertain unanimous-consent requests to change procedures contained in such a rule. Deschler Ch 27 § 3.29 (note).

A special rule may waive points of order against a bill or against specified amendments thereto. Deschler Ch 27 § 3. Such a waiver will not be implied. A special rule merely ''making in order'' an amendment offered by a designated Member but not specifically waiving points of order does not permit consideration of the amendment unless in conformity with the general rules of the House. Deschler Ch 27 § 3.72 (note). A waiver of points of order against a bill does not apply to amendments offered from the floor. Deschler Ch 27 § 3.

The so-called ''self-executing'' special order has been applied in recent years to expedite the amendment process. A special rule has been reported to the House which provided that an amendment striking language in the bill ''shall be considered to have been adopted.'' 99–2, July 27, 1986, pp 17603, 17604. The Committee on Rules has also reported rules which have ''self-executed'' the adoption of nongermane amendments. 103–1, Feb. 24, 1993, p ____; 103–1, July 27, 1993, p ____.

§ 12. — Amendments Printed in the Record

Where a Member seeks recognition to offer an amendment under a special rule which permits only germane amendments which have been printed in the *Congressional Record*, the amendment must qualify under the rule. 95–1, Sept. 23, 1977, p 30530. An amendment similar but not identical to the text of an amendment printed in the Record has been held out of order under such a rule. 93–2, Feb. 6, 1974, p 2368. Unanimous consent is required to offer an amendment which differs in any way from an amendment permitted under the rule. Deschler Ch 27 § 3.25; 94–2, Sept. 1, 1976, pp 28871, 28872, 28877; 95–1, Oct. 27, 1977, pp 35385, 35386.

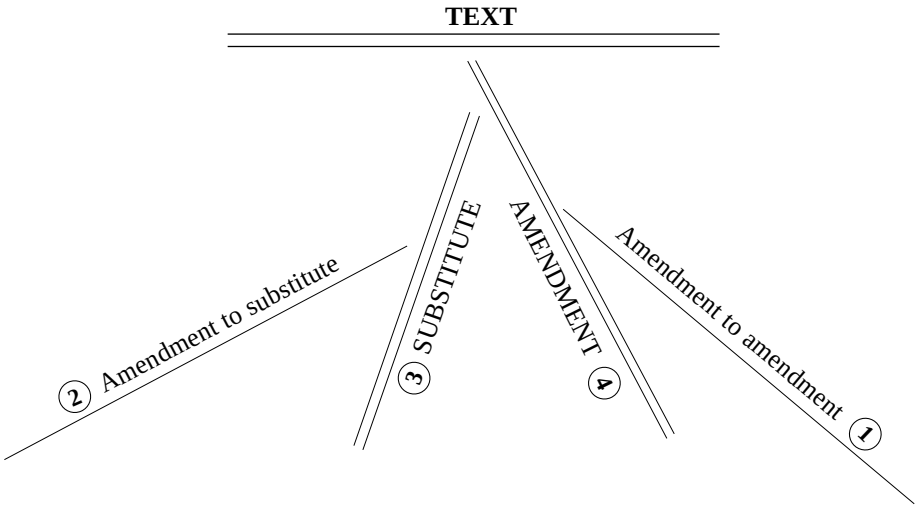
Where a special rule restricts the offering of amendments to those printed in the *Congressional Record* but does not specify the Members who must

offer them, the right to propose amendments properly inserted in the Record inures to all Members. 93–2, Mar. 26, 1974, pp 8229, 8233, 8243.

A special rule prohibiting amendments to a bill except those printed in the *Congressional Record* does not apply to amendments to amendments unless so specified. Deschler Ch 27 § 3.13.

B. Permissible Pending Amendments

§ 13. Generally; The Stages of Amendment



The checklist below and the appended chart show the four common motions that may be pending simultaneously under Rule XIX (5 Hinds § 5753) and the order in which they are voted on (see also § 28, infra):

- To amend the text (4)
- To amend the proposed amendment (1)
- To amend by a substitute (3)
- To amend the substitute (2)

Generally, only one amendment to the text may be pending at any one time. 5 Hinds § 5755; Deschler Ch 27 § 1. Once that amendment is offered, however, the other three forms of amendment shown above may be offered and all four amendments may be pending at one time. 5 Hinds § 5753; 8 Cannon § 2883; 27 Deschler Ch 27 § 1.

The amendments shown in the chart are amendments in the first or second degree. Amendments beyond the second degree, such as an amendment

to the amendment to the amendment to the pending text, are not in order. See § 14, infra. Frequently, however, as by special rule, an amendment in the nature of a substitute may be considered as an original text for purposes of amendment, thereby extending the permissible degrees of amendment. Deschler Ch 27 § 1. Indeed a special rule reported from the Committee on Rules may specifically permit the offering of amendments beyond the second degree. 94–1, Feb. 27, 1975, p 4593. In one instance in 1979, pursuant to special rule, up to eight amendments were pending simultaneously to the pending text. 96–1, May 15, 1979, pp 1050 *et seq.*

There is no limit to the number of amendments that may be offered either to an amendment or to a substitute; when one second degree amendment has been disposed of, another can be offered. Deschler Ch 27 § 5.16. And where both an amendment and a substitute have been offered, each may have one amendment pending to it at one time. Deschler Ch 26 §§ 5.14, 5.15.

Perfecting the Original Text

It is in order to offer a perfecting amendment to the pending portion of original text, even though there is pending an amendment in the nature of a substitute for the pending measure. Deschler Ch 27 § 5.34. Likewise, where there is pending a motion to strike a title of a bill, perfecting amendments to that title may nevertheless be offered and voted on prior to voting on the motion to strike. Deschler Ch 27 § 5.11.

Amending Pending Amendments

Only one amendment to a pending amendment may be pending at one time. Deschler Ch 27 §§ 5.7, 5.17, 5.24; 96–1, Apr. 9, 1979, p 7763. But as soon as an amendment to an amendment is adopted or rejected another is in order seriatim until the amendment is perfected; and only after disposition of the amendment will further amendment of the bill be allowed. Deschler Ch 27 § 5.5.

Amending Substitute Amendments

A substitute for an amendment is subject to amendment. Deschler Ch 27 §§ 5.3, 5.4. Thus, where an amendment, an amendment thereto, and a substitute for the original amendment are pending, it is in order to offer an amendment to the substitute. Deschler Ch 27 § 5.13. Other amendments to the substitute are in order following disposition of the pending amendment to the substitute. Deschler Ch 27 § 5.25.

Amending Amendments in the Nature of a Substitute

When properly made in order, an amendment in the nature of a substitute may be considered as original text for purposes of amendment. Accordingly, where pursuant to a special rule a committee amendment in the nature of a substitute is being read as original text for purpose of amendment, there may be pending to that text (1) an amendment, (2) a substitute therefor, and (3) amendments to both the amendment and the substitute. Deschler Ch 27 § 5.32. See also 91–2, Dec. 2, 1970, p 39500. And as often as amendments to the amendment are disposed of, further amendments may be offered and voted upon prior to voting on the amendment to the substitute. Deschler Ch 27 § 5.21.

§ 14. Amendments in the Third Degree

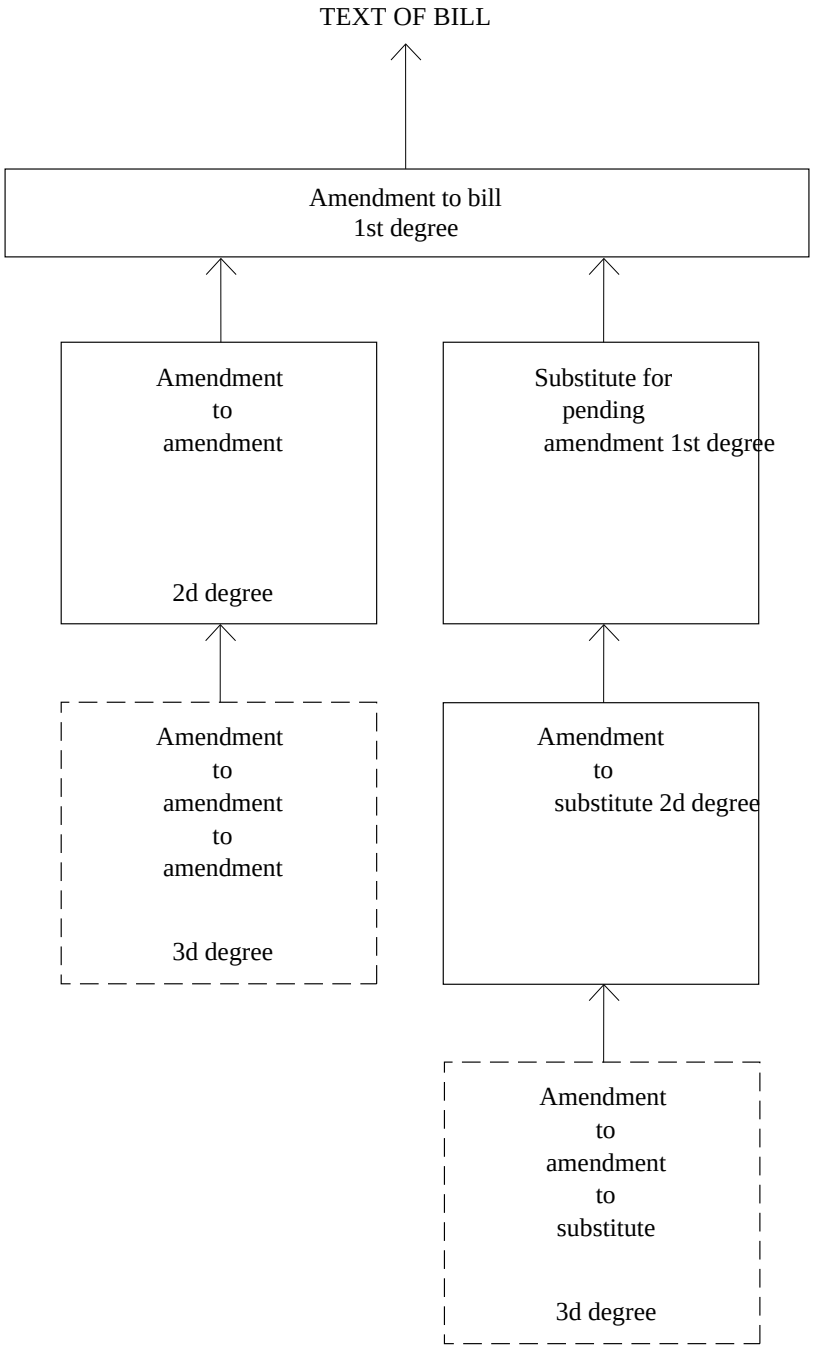
The following chart shows the four common forms of amendments in the first or second degree and distinguishes them from amendments in the third degree.

Amendments in the third degree are not in order. 5 Hinds § 5754; 8 Cannon § 2580; Deschler Ch 27 § 6.1. ''The line must be drawn somewhere,'' wrote Thomas Jefferson, ''and usage has drawn it after the amendment to the amendment.'' *Manual* § 454. This principle is reflected in Rule XIX (*Manual* § 822) and is considered fundamental in the House of Representatives. Deschler Ch 27 § 6. Thus, as shown by the chart, an amendment to an amendment to an amendment is in the third degree and not in order. Deschler Ch 27 § 6.2; 89–1, Aug. 18, 1965, pp 20938, 20943; 95–1, July 27, 1977, p 25252. Until the amendment to the amendment is disposed of, no further amendment to the amendment may be offered. Deschler Ch 27 § 6.12; 88–1, Apr. 29, 1963, p 7242.

The prohibition against amendments in the third degree also applies to amendments between the House and Senate. If a bill originating in one House is amended by the other, the originating House may amend the amendment, and the second House may again amend. Any further amendment between the Houses would be in the third degree (*Manual* § 529). 93–1, Oct. 18, 1973, p 34699.

Substitutes for Pending Amendments Distinguished

As shown by the following chart, a substitute for a pending first degree amendment is subject to amendment (98–1, May 4, 1983, p 11074), whereas a perfecting amendment to an amendment is not, as that would be in the third degree (96–1, Mar. 8, 1979, pp 4507, 4508, 4510). The substitute permitted by Rule XIX is an alternative to the original first degree amendment


TEXT OF BILL
Amendment to bill
1st degree
Amendment
to
amendment
2d degree
Substitute for
pending
amendment 1st degree
Amendment
to
amendment
to
amendment
3d degree
Amendment
to
substitute 2d degree
Amendment
to
amendment
to
substitute
3d degree

and not for the amendment to that amendment. Indeed, when an amendment and a perfecting amendment thereto are pending, neither an amendment to, or substitute for, the perfecting amendment is in order, being in the third degree. Deschler Ch 27 § 6.2; 96–1, Apr. 9, 1979, p 7763.

While a perfecting amendment to a pending substitute should retain some portion of the substitute so as not to be in effect a substitute in the third degree, the Chair does not look behind the form of the amendment in the absence of a timely point of order from the floor. Deschler Ch 27 § 6.21.

Amendments in the Nature of a Substitute

Normally, an amendment to or a substitute for an amendment to an amendment in the nature of a substitute would be in the third degree and not in order. This principle, however, would not apply if the amendment in the nature of a substitute were being considered as original text for purposes of amendment. Deschler Ch 27 § 6.15 (note). Where an amendment in the nature of a substitute is considered as original text for the purpose of amendment, pursuant to a special order, an amendment to an amendment thereto is not in the third degree and is in order. Deschler Ch 27 § 6.18.

Amendments While Motion to Strike Pending

While a motion to strike out is pending, it is in order to offer an amendment to perfect the language proposed to be stricken out; such a perfecting amendment (which is in the first degree) may be amended by a substitute (also in the first degree), and amendments to the substitute are then in the second degree and in order. Deschler Ch 27 § 6.20.

Pro Forma Amendments

In the Committee of the Whole, pro forma amendments are technically not in order where the four permitted amendments are pending if the point of order is raised, as they would constitute amendments in the third degree. But Chairmen have hesitated to rule out of order pro forma amendments as being in the third degree since the Committee has the power to close debate when it chooses, and has permitted such amendments to be offered by unanimous consent. Deschler Ch 27 § 6.22. See also 79–2, Feb. 4, 1946, p 848.

C. When to Offer Amendment; Reading for Amendment

§ 15. In General; Reading by the Clerk

Amendments are not in order in Committee of the Whole until general debate has been closed. 4 Hinds § 4744. Amendments are then taken up

under the five-minute rule. Rule XXIII clause 5(a). *Manual* § 870. The bill is read for amendment, and amendments are offered and debated at the appropriate point in the reading. Thus, when a bill is being read for amendment in the Committee of the Whole by sections, it is not in order to offer amendments except to the one section under consideration. Deschler Ch 27 § 7. And after a section or paragraph has been passed it is no longer subject to amendment. *Manual* §§ 413, 872.

Bills are ordinarily read for amendment by sections or paragraphs in sequence, but by unanimous consent the Committee of the Whole may vary the order in which the portions of a bill are read for amendment under the five-minute rule. 96–1, Sept. 12, 1979, p 24204. Indeed, the reading of a bill may be entirely dispensed with by unanimous consent. Deschler Ch 27 §§ 7.1, 7.18.

House Practice Distinguished

In the House, amendments to measures on the House Calendar are made where the Member calling up the measure yields for an amendment, or if the previous question is not moved or ordered, pending the engrossment and third reading. 5 Hinds § 5781; 7 Cannon § 1051; Deschler Ch 27 § 13.3. Amendments may be offered to any part of the bill without proceeding consecutively section by section or paragraph by paragraph. 4 Hinds § 3392.

Practice in House as in Committee of the Whole

Where a bill is by unanimous consent considered in the House *as in* the Committee of the Whole, the bill is considered as read and open to amendment at any point under the five-minute rule. Deschler Ch 27 § 11.22; 91–2, Aug. 10, 1970, p 28050. And this is so despite the fact that the House has previously adopted a special order providing that the bill be read by title in the Committee of the Whole. Deschler Ch 27 § 7.2.

§ 16. Amendments to Text Passed in the Reading

In the Committee of the Whole amendments to a section are in order after the section has been read or the reading dispensed with (89–1, June 29, 1965, p 15162) and remain in order until the reading of the next portion to be considered (96–1, Sept. 13, 1979, p 24425). Generally, an amendment comes too late when the Clerk has read beyond the section to which the amendment applies. Deschler Ch 27 § 8.1; 102–2, June 30, 1992, p ____. See also 8 Cannon § 2930.

An amendment offered as a new section is in order to a bill being read by sections after the Clerk has read up to, but not beyond, the point at which the amendment would be inserted. The amendment must be offered

after the consideration of the section of the bill which it would follow, and comes too late after the next section of the bill has been read for amendment. 93–2, July 2, 1974, pp 22026, 22028; Deschler Ch 27 § 8.17. A section is considered passed for the purpose of amendment after an amendment inserting a new section has been adopted following that section. Deschler Ch 27 § 8.12. An amendment adding a new section at the end of a bill is in order after the last section of the bill has been read even though other amendments adding new sections have been adopted. 95–2, Aug. 14, 1978, p 29563.

A point of order as to the timeliness of an amendment may not be raised in such a way as to deprive a Member of a timely opportunity to present an amendment. A point of order that an amendment to a section or a paragraph of a bill comes too late does not lie where the Member offering the amendment was standing and seeking recognition before the section or paragraph was passed in the reading. 95–2, June 8, 1978, p 16779. (For a similar ruling, see Deschler Ch 27 § 8.22.) And the Chair has on occasion directed the Clerk to reread a paragraph of a bill where there was doubt as to how far the Clerk had read. Deschler Ch 27 § 8.4.

§ 17. Amendments to Text Not Yet Read; Amendments En Bloc

It is not in order to strike out (93–1, July 25, 1973, p 25829) or otherwise amend portions of a bill not yet read for amendment (Deschler Ch 27 § 9.1; 102–2, June 30, 1992, p ____). Even committee amendments printed in a bill are not considered until the section where they appear is read for amendment. Deschler Ch 27 § 9.4. Amendments to a pending title of a bill and to a subsequent title may be offered en bloc only by unanimous consent. Deschler Ch 27 § 9.13. Similarly, to a bill being read for amendment by sections, amendments to more than one section may be considered en bloc by unanimous consent only. 95–1, Oct. 5, 1977, p 20523.

In the 104th Congress, clause 2(f) of Rule XXI was added to permit the offering of certain ''budget neutral'' amendments when an appropriation bill is being read for amendment. Such amendments are made in order en bloc even if they affect paragraphs in the appropriation bill not yet read for amendment. Such amendments are not subject to division. *Manual* § 834f.

§ 18. Amendments to Bills Considered as Read and Open to Amendment

Unless permitted by special order (95–1, Aug. 2, 1977, p 26124), a bill may be considered as read and open to amendment at any point only by unanimous consent; a motion to that effect is not in order. Deschler Ch 27

§ 11.2. Similarly, during the reading of a section for amendment, that section can be considered as read and open to amendment at any point only by unanimous consent. Deschler Ch 27 § 11.4. Where such consent is granted, amendments may then be offered to any portion of the bill not yet read for amendment at the time the permission is granted. Deschler Ch 27 § 11.9. Of course, amendments remain in order to that portion of the bill pending when the request was granted. 94–1, Apr. 23, 1975, p 11546; 94–1, June 4, 1975, p 16899. But an agreement that the remainder of the bill be considered read and open for amendment at any point does not admit an amendment to a portion of the bill already passed in the reading. Deschler Ch 27 § 11.8.

§ 19. Amendments in the Nature of a Substitute

An amendment in the nature of a substitute for a bill is in order after the first section (or paragraph) of the bill has been read for amendment (Deschler Ch 27 §§ 12.1, 12.2; 95–2, Mar. 20, 1978, p 7559) or following the reading of the final section (or paragraph) of the bill (91–2, Apr. 14, 1970, p 11649; Deschler Ch 27 § 12.4). To a bill being read for amendment by titles, an amendment in the nature of a substitute for the entire bill may be offered either after the reading of the ''short title'' of the bill (which is normally a separate section of the bill preceding title I) or at the conclusion of the reading of the whole bill. Deschler Ch 27 § 12.

An amendment in the nature of a substitute for a bill is not in order at an intermediate stage of the reading. Deschler Ch 27 § 12.10 (note). See also 95–1, Sept. 29, 1977, p 31543. Of course, if the bill is considered as having been read for amendment, then an amendment in the nature of a substitute may be offered at any time during consideration of the bill. 95–1, Mar. 29, 1977, p 9353.

While an amendment in the nature of a substitute may ordinarily be offered after the reading of the first section of a bill being read by sections and prior to committee amendments adding new sections, where a bill consists of one section and is therefore open to amendment at any point when read, committee amendments adding new sections are considered perfecting amendments and are disposed of prior to the offering of amendments in the nature of a substitute. 94–1, Nov. 7, 1975, p 35525.

An amendment in the nature of a substitute is in order after an entire bill has been read and perfecting amendments have been adopted thereto, as long as such perfecting amendments have not changed the bill in its entirety. Deschler Ch 27 § 12.16. Similarly, an amendment in the nature of a substitute may be offered for a bill (or for an amendment being considered

as original text) after the reading thereof has been completed, if another amendment in the nature of a substitute has not been previously adopted. 95–2, May 18, 1978, p 14391.

§ 20. Recognition to Offer Amendments; Priority

Necessity of Recognition

It being fundamental that recognition rests with the Chair (2 Hinds § 1422), a Member wishing to offer an amendment must first be recognized by the Chair for that purpose. Deschler Ch 27 § 4.1. It is for this reason that a Member holding the floor under the five-minute rule may not yield to another Member to offer an amendment. Deschler Ch 27 § 4.6.

Discretion of Chair

Except in cases where he is governed by a special order adopted by the House (Deschler Ch 27 § 4.35), recognition for the purpose of offering amendments is within the discretion of the Chair (Deschler Ch 27 § 4.2). No point of order lies against the Chair's recognition of one Member over another (where the special order governing the consideration of the bill is silent in this respect). 96–1, June 21, 1979, pp 15999, 16000; Deschler Ch 27 § 4.19. Nevertheless, in the absence of a controlling special order, the Chair ordinarily follows the many precedents and practices that serve as guidelines to the Chair in according recognition to Members to offer amendments. Deschler Ch 27 § 4.35. For example, the Chair may accord recognition pursuant to the principle of alternation between majority and minority parties or on the priority of perfecting amendments over motions to strike. 96–1, June 21, 1979, pp 15999, 16000.

Priority of Committee Amendments

Amendments recommended by a committee reporting a bill are normally considered before amendments offered from the floor (97–2, Dec. 1, 1982, pp 28206, 28207), even where the bill is considered read and open to amendment (Deschler Ch 27 § 4.34). Thus, perfecting committee amendments to a paragraph under consideration are disposed of before amendments from the floor are considered. Deschler Ch 27 § 4.33.

Committee Membership as Basis for Recognition

In recognizing Members to offer amendments in the Committee of the Whole, preference is ordinarily given to members of the committee reporting the bill, if on their feet seeking recognition. Deschler Ch 27 § 4.8. Members of the committee reporting a pending bill are entitled to prior recogni-

tion over noncommittee members despite their party affiliation. Deschler Ch 27 § 4.10.

Members of the reporting committee or committees are normally accorded prior recognition in order of full committee seniority (Deschler Ch 27 §§ 4.11, 4.13) and not by the sequence of lines in the pending paragraph to which those amendments may relate. Deschler Ch 27 § 4.30. It is within the discretion of the Chair as to whether he will first recognize a majority or minority member of the committee. Deschler Ch 27 § 4.18.

Effect of Parliamentary Inquiries

The fact that the Chair has recognized a Member to raise a parliamentary inquiry does not prohibit the Chair from then recognizing the same Member to offer an amendment, and the principle of alternation of recognition does not require the Chair to recognize a Member from the minority to offer an amendment after recognizing a Member from the majority to raise a parliamentary inquiry. Deschler Ch 27 § 4.13 (note).

D. Offering Particular Kinds of Amendments; Precedence and Priorities

§ 21. Introductory; Perfecting Amendments

Generally, the House follows the Jeffersonian principle that language should be perfected before taking other action on it. Deschler Ch 27 § 15. ''[T]he friends of the paragraph'' Jefferson wrote, ''may make it as perfect as they can by amendments before the question is put for inserting it. . . . In like manner, if it is proposed to amend by striking out a paragraph, the friends of the paragraph are first to make it as perfect as they can by amendments, before the question is put for striking it out.'' *Manual* § 469. An important exception to this rule is that a motion to strike out the enacting words of a bill, being a device used for purposes of rejecting the bill, has precedence over a motion to amend the bill. Rule XXIII clause 7. *Manual* § 875.

A motion to strike and a perfecting amendment may be pending simultaneously. They must be voted on separately in a specified order (§ 28, infra), and they may not be offered as amendments to or substitutes for one another. But they need not be offered in the order in which they are voted on. Deschler Ch 27 § 15.1. When a motion to strike out a pending portion of a bill is pending, perfecting amendments are in order to the *text* proposed to be stricken—not to the motion to strike. Deschler Ch 27 § 15.13.

Precedence Over the Motion to Strike

A perfecting amendment to the text of a bill is in order and takes precedence over a pending motion to strike out the text, and is first acted upon. Deschler Ch 27 §§ 15.3, 15.4; 91–2, Mar. 19, 1970, p 8188; 95–1, Oct. 3, 1977, p 32017. Thus, an amendment inserting new words is in order and takes precedence over a pending motion to strike out that portion of the text. Deschler Ch 27 § 15.7; 95–1, Feb. 24, 1977, p 5370.

Perfecting amendments to a paragraph may be offered (one at a time) while a motion to strike out the paragraph is pending, and such perfecting amendments are first disposed of. Deschler Ch 27 §§ 15.5, 15.15; 89–2, Mar. 29, 1966, pp 7104–06, 7118. Under this rule, where a perfecting amendment is offered and rejected, a second perfecting amendment may be offered prior to the vote on a motion to strike out. 87–2, Apr. 10, 1962, pp 6167–69. And if the motion to strike out is ultimately defeated, further perfecting amendments to the pending text are yet in order. Deschler Ch 27 § 15.8; 89–2, Aug. 3, 1966, p 18136.

While a motion to strike a pending portion of a bill will be held in abeyance until perfecting amendments to that portion are disposed of (102–2, May 5, 1992, p ____), a Member who has been recognized to debate his motion to strike may not be deprived of the floor by another Member who seeks to offer a perfecting amendment; after the Member so recognized has completed his five minutes in support of his motion to strike, but before the question is put on the motion to strike, the perfecting amendment may be offered and voted upon. Deschler Ch 27 § 15.11.

Whether or not preferential perfecting amendments to the pending text, offered pending a motion to strike that text, are adopted or rejected, a vote still must be taken on the motion to strike (assuming that the perfecting amendments do not change the entire text pending). Deschler Ch 27 § 15.24. But if perfecting amendments are agreed to, and are coextensive with the material proposed to be stricken, the motion to strike out the amended text falls and is not acted on. Deschler Ch 27 § 15.25.

Precedence Over Amendment in the Nature of a Substitute

Where a bill consists of several sections, an amendment in the nature of a substitute should be offered after the reading of the first section and following disposition of perfecting amendments to the first section. Deschler Ch 27 § 15.40 (note). Indeed, a perfecting amendment to the first section of a bill may be offered while an amendment in the nature of a substitute for the entire bill is pending. Deschler Ch 27 § 15.32. And a perfecting amendment to a pending paragraph of a bill is in order and is not precluded

by the intervention of an amendment in the nature of a substitute for the paragraph and several of those following. Deschler Ch 27 § 15.33.

§ 22. Motions to Strike

Amendments proposing to strike out a section of a bill are in order after perfecting amendments to the section are disposed of. Deschler Ch 23 § 17.3; 93–2, Dec. 10, 1974, pp 38749 *et seq.* A motion to strike out a section or paragraph is not in order while a perfecting amendment is pending. Deschler Ch 27 §§ 16.6, 17.1; 88–1, Dec. 16, 1963, pp 24753, 24755; 93–2, June 5, 1974, pp 17868, 17869. The motion to strike out, if already pending, must remain in abeyance until the amendment to perfect has been moved and voted on. 5 Hinds § 5758; 8 Cannon § 2860; *Manual* § 469. Since a provision must be perfected before the question is put on striking it out, a motion to strike out a paragraph or section may not be offered as a substitute for a pending motion to perfect the paragraph or section. 88–1, Dec. 16, 1963, pp 24753, 24755; 93–2, June 5, 1974, pp 17868, 17869. And this is true even where the pending perfecting amendment is a motion to strike out and insert new text. 89–2, Oct. 14, 1966, p 26966; 90–2, June 4, 1968, p 15889. However, while the motion to strike out is not in order in this situation as a substitute, it may be offered after disposition of the perfecting amendment to strike out and insert if more comprehensive in scope. 96–1, July 25, 1979, pp 20623, 20624.

While an amendment which has been agreed to may not be modified, a proposition to strike it from the bill with other language of the original text is in order. 8 Cannon § 2855. Thus, if the pending title of a bill is perfected by an amendment adding a new section thereto, and the Committee of the Whole thereafter agrees to a motion to strike out the entire title, the words added by the perfecting amendment are eliminated along with the rest of the title. 91–1, Oct. 3, 1969, p 28454.

To a motion to strike out certain text and insert new language, a simple motion to strike out all that text may not be offered as an amendment, as it would have the effect of dividing the motion to strike out and insert which is prohibited by Rule XVI clause 7. 93–2, July 25, 1974, pp 25240, 25241. See also 96–1, June 19, 1979, pp 15566–68.

Motion to strike unfunded federal mandate, see Rule XXIII clause 5(c). See also § 49, infra.

§ 23. Motions to Strike Out and Insert

As a perfecting amendment, a motion to strike out and insert takes precedence over a pending motion to strike out. 8 Cannon § 2849. It may be

offered while the motion to strike out is pending and is first acted upon. Deschler Ch 27 § 16.3. If the perfecting amendment is agreed to, and is coextensive with the motion to strike, the motion to strike out the amended text falls and is not acted on. Deschler Ch 27 § 16.4.

By House rule, a motion to strike out and insert is indivisible. Rule XVI clause 7. *Manual* § 793. For this and other reasons, a motion to strike out is not in order as a substitute for a pending motion to strike out and insert. Deschler Ch 27 § 17.18. Conversely, a motion to strike out and insert a portion of a pending section is not in order as a substitute for a motion to strike out the section, but may be offered as a perfecting amendment to the section and is first voted upon, subject to being eliminated by subsequent adoption of the motion to strike out. 97–1, July 16, 1981, p 10658.

§ 24. Substitute Amendments

Generally

A ''substitute'' is a substitute for an amendment, and not a substitute for the original text. § 6, supra. A substitute can be entertained only after an amendment is pending. 8 Cannon § 2883. In the Committee of the Whole, the proper time to offer a substitute for an amendment is after the amendment has been read and the Member offering it has been permitted to debate it under the five-minute rule. Deschler Ch 27 § 18.2. The substitute is then in order until the Chair puts the question on the amendment. Deschler Ch 27 § 18.3.

Substitutes for Amendments in the Nature of a Substitute

An amendment in the nature of a substitute is subject to amendment by a substitute therefor (Deschler Ch 27 § 18.18), and the substitute is in order even after perfecting amendments have been adopted to the amendment in the nature of a substitute. See Deschler Ch 27 § 18.19.

Reoffering Substitute Propositions

Whether a proposition contained in a substitute may be reoffered in a different form after it has failed of approval depends on the circumstances. If the language of the substitute is reoffered in such a way as to present precisely the same question that has already been voted on, it would not be in order. Where an amendment is altered by adoption of a substitute, and then is rejected as so amended, the language of the substitute cannot be reoffered at that point as a first degree amendment. See Deschler Ch 27 § 18.25 and note. Clearly, however, where the actual proposition was never voted on because of changes made through the amendment process, the proposition may be offered again as, for example, an amendment to text.

Where an amendment is offered, and then a substitute for that amendment, the consideration of that substitute necessarily proceeds with reference only to the particular amendment to which offered. This may present a different question from that which would arise if the language of the substitute were considered with reference to the text of the bill. Compare 5 Hinds § 5797, 8 Cannon § 2843, and Deschler Ch 27 § 18.25 (note). See also *Manual* § 823.

§ 25. Offering Amendments During Yielded Time

In the House

A measure being considered in the House is not subject to amendment unless the Member in control yields for that purpose (89–1, Jan. 4, 1965, p 20) or the previous question is either not moved or is rejected (see § 26, infra). Ordinarily, an amendment to the measure may be offered only by the Member having the floor unless he yields for that purpose; and it is within the discretion of the Member in charge whether, and to whom, he will yield. Deschler Ch 27 § 13.3. An amendment may not be offered in time yielded for debate only. 8 Cannon § 2474; Deschler Ch 27 § 13.1.

A Member controlling debate in the House on a measure may yield to another to offer an amendment (8 Cannon § 2470; 89–1, Sept. 17, 1965, p 24290), despite his prior announced intention not to yield for such purpose (92–1, Apr. 29, 1971, pp 12489, 12504). The Member so yielded to may then offer an amendment, be recognized for an hour, and may himself yield time. 89–1, Sept. 17, 1965, p 24290.

A Member who has the floor in debate in the House may not yield to another Member to offer an amendment without losing control of his time. 5 Hinds § 5021. By yielding to another to offer an amendment he loses his right to resume. 5 Hinds § 5031. However, a Member may yield to permit an amendment to be read for information without losing control of his time. 8 Cannon § 2477.

In Committee of the Whole

A Member recognized under the five-minute rule may not yield to another Member to offer an amendment. 93–1, Apr. 19, 1973, p 13240; 95–2, May 18, 1978, p 14410; 95–2, July 13, 1978, p 20653. A Member wishing to offer an amendment under the five-minute rule must seek recognition from the Chair and may not be yielded the floor for that purpose by another Member. Deschler Ch 27 § 13.7.

§ 26. Effect of Previous Question; Expiration of Time for Debate

Generally; House Practice

After the previous question has been moved or ordered on a bill and pending amendments, further amendments may not be offered. 5 Hinds §§ 5486, 5487. The demand for the previous question cuts off further amendments unless the previous question is rejected. Deschler Ch 27 § 14.1; 89–1, Jan. 4, 1965, p 19. And the adoption of the previous question on a proposition precludes further debate or amendment and brings the House to an immediate vote thereon. 86–2, Aug. 26, 1960, p 17869; 96–1, July 24, 1979, pp 20385, 20412, 20413.

The previous question may be moved (1) on a pending amendment, or (2) on the measure to which offered, or (3) on both propositions. See PREVIOUS QUESTION. Thus, where the previous question is ordered in the House on a pending resolution *and* the amendment thereto, the vote immediately recurs on the adoption of the resolution after the disposition of the amendment, and no intervening amendment is in order. Deschler Ch 27 § 14.3. However, a motion to commit may be in order under Rule XVII. *Manual* §§ 804, 808. See REFER AND RECOMMIT.

The previous question is sometimes ordered on undebatable motions for the specific purpose of preventing amendments thereto. 5 Hinds § 5490. An amendable motion offered in the House is not subject to amendment after the previous question has been ordered thereon. 95–2, Feb. 22, 1978, p 4074.

Expiration of Debate Time in Committee of the Whole

An amendment to a pending section of a bill being considered in the Committee of the Whole may be offered notwithstanding the expiration of all time for debate on the section and any amendments thereto. Deschler Ch 27 § 14.9. By House rule (Rule XXIII clause 6, *Manual* § 874) the expiration of a limitation on debate under the five-minute rule does not prohibit the offering of further amendments, but such amendments are not subject to debate (if not printed in the *Congressional Record*). Deschler Ch 27 § 14.10. See also CONSIDERATION AND DEBATE.

E. Consideration and Voting

§ 27. In General; Reading of Amendment

Generally

Amendments to a bill must be read in full (8 Cannon § 2339) or their reading dispensed with in accordance with the rules, and this is so even where the bill itself is considered as having been read for amendment pursuant to a special rule (Deschler Ch 27 § 22). The reading of an amendment must be completed before an amendment thereto is in order. 87–2, Jan. 23, 1962, p 759; 88–2, Feb. 20, 1964, p 3217.

Amendments at the Clerk's desk must be offered by a Member before they will be read by the Clerk. 93–1, Dec. 14, 1973, p 41731. They need not be reoffered after they have been reported by the Clerk notwithstanding suspension of consideration of the bill. Where the Committee of the Whole resumes its consideration of a bill after an interval of time, the Chair sometimes (without objection) directs the Clerk to rereport the amendments which were pending at the time the Committee rose. 91–2, May 6, 1970, p 14418.

Numbering Amendments

Beginnning in the 104th Congress, amendments printed in the Record are numbered in the order submitted for printing (Rule XXIII clause 6).

Dispensing With Reading

The reading of an amendment may be dispensed with by unanimous consent (94–2, Feb. 9, 1976, p 2872) or waived pursuant to the provisions of a special rule (95–2, Oct. 6, 1978, p 34087). The reading of an amendment in the Committee of the Whole may also be dispensed with by motion, if the amendment has been printed in the bill as reported, or if printed in the Record and submitted one day prior to floor consideration to the committee or committees reporting the bill. Rule XXIII clause 5. *Manual* § 873b.

Rereading Amendments

An amendment which has been once read may not be read again except by unanimous consent. Deschler Ch 27 § 22.2; 90–1, Mar. 1, 1967, pp 5036–38. It is not within the province of the Chair to analyze the effect of amendments, and the Chair has declined to ask unanimous consent that the Clerk read the ''differences'' between two pending amendments. 95–1, Apr. 6, 1977, p 10773.

Amendment in Nature of Substitute

The reading of an amendment in the nature of a substitute must be completed before an amendment thereto is in order. Deschler Ch 27 § 22.5. An amendment in the nature of a substitute is not read by sections in the absence of a special rule which specifies to the contrary, and is open to amendment at any point when read in its entirety. Deschler Ch 27 § 22.6; 96–1, Dec. 18, 1979, pp 36791, 36793, 36794. Where, pursuant to a special rule, an amendment in the nature of a substitute is being read as an original bill for the purpose of amendment, the amendment is read section by section, and substantive as well as pro forma amendments are in order following the reading of each section. 88–2, Feb. 26, 1964, p 3641.

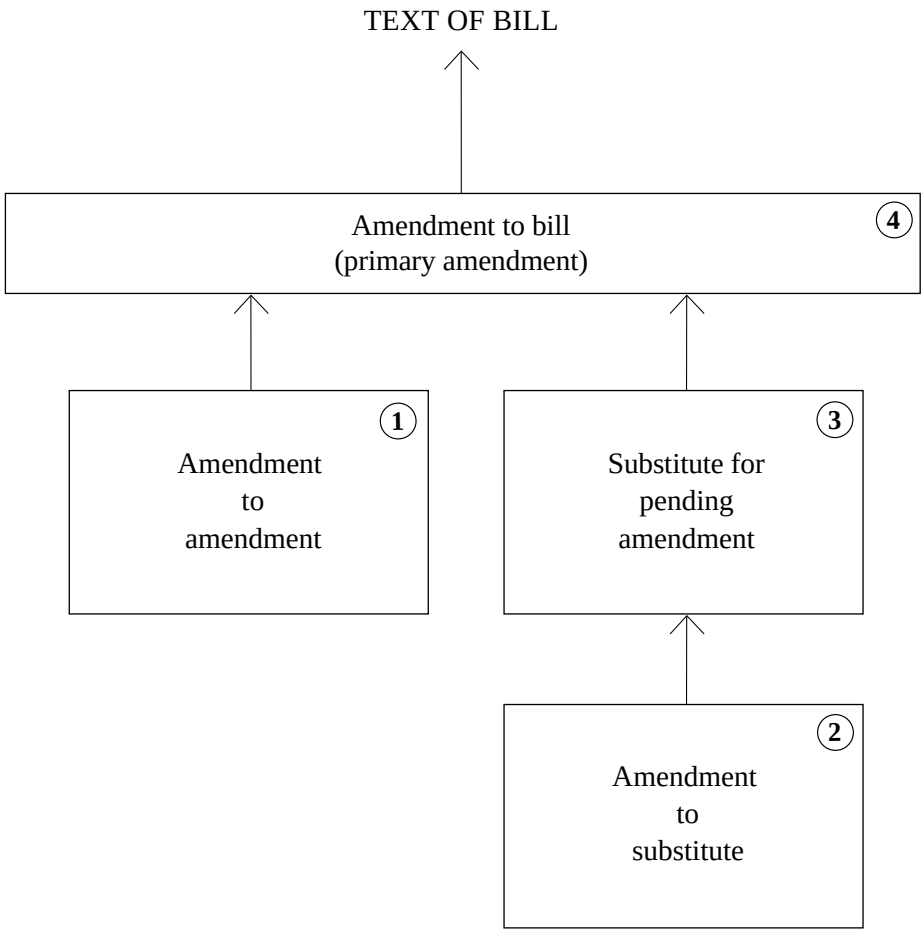
§ 28. Order of Consideration Generally

Voting Sequence

The four forms of amendment permitted by Rule XIX may be pending simultaneously. § 13, supra. However, as shown by the appended chart, they must be voted on in the sequence shown, as follows: (1) amendments to the amendment, if any, are disposed of first, seriatim, until the amendment is perfected; (2) amendments to the substitute are next voted on, seriatim, until the substitute is perfected; (3) the substitute is next voted on; (4) the amendment is voted on last, so that if the substitute has been agreed to, the vote is on the amendment as amended by the substitute. Rule XIX. *Manual* § 822. See also Deschler Ch 27 § 23, and 95–2, May 18, 1978, p 14393.

A perfecting amendment to an amendment must be offered before the vote on the amendment. 98–1, May 4, 1983, p 11074. Once a perfecting amendment to an amendment is disposed of, the original amendment, as amended or not, remains open to further perfecting amendment, and all such amendments are disposed of prior to voting on substitutes for the original amendment and amendments thereto. Deschler Ch 27 § 23.9; 102–1, June 19, 1991, p ____.

Disposition of the perfecting amendment to the substitute does not preclude the offering of further amendments to the amendment. 96–1, May 15, 1979, p 11180. But when the substitute is adopted, the vote recurs immediately upon the original amendment as amended by the substitute, and further perfecting amendments (including pro forma amendments) are not in order. 96–1, May 1, 1979, pp 9299–301, 9311.



Effect of Special Rule

A special order reported from the Committee on Rules may reverse or alter the normal order of consideration of amendments in the Committee of the Whole. 99–1, May 22, 1985, p 13001. Where the House has adopted a special rule permitting the consideration of amendments in Committee of the Whole only in a prescribed order, the Committee of the Whole must rise to permit the House, by unanimous consent, to change that order of consideration. Deschler Ch 27 § 23.

§ 29. Committee Amendments

Pending amendments, whether favorably or adversely recommended by the committee reporting the bill, must be voted on. 8 Cannon § 2865. The Committee of the Whole must vote on a pending amendment even though it has been ''accepted'' by members of the committee reporting the bill. Deschler Ch 27 § 26.10.

Committee amendments to a bill are ordinarily taken up before amendments from the floor, although they are not voted on until after they have been perfected. 5 Hinds § 5773. Floor amendments to the bill are normally in order following the disposition of pending committee amendments perfecting that bill, even though the bill is open to amendment at any point. Deschler Ch 27 § 26.3. Where a bill is considered as having been read for amendment, it is open to amendment at any point and all committee perfecting amendments must be disposed of, regardless of their place in the bill, prior to offering of amendments to the bill from the floor. Deschler Ch 27 § 26.5.

Where a committee amendment proposes to strike a portion of the text, a perfecting amendment from the floor may intervene before the vote is taken on the committee amendment. See § 21, supra.

A committee amendment to the first paragraph or section of a bill is voted on before a vote is taken on an amendment in the nature of a substitute to strike out all after the enacting clause and insert new matter. Deschler Ch 27 § 26.1.

§ 30. Amendments En Bloc; Use of Special Rules

Generally

Amendments may be considered en bloc only by unanimous consent (Deschler Ch 27 §§ 27.2, 27.3) or pursuant to a special rule (Deschler Ch 27 §§ 27.14–27.16). Amendments considered en bloc by unanimous consent are subject to germane amendment after they have been read. 95–2, Mar. 9, 1978, p 6286. Once pending they are open to perfecting amendment at any point. 102–1, June 12, 1991, p ____.

En bloc amendments may be offered to a pending amendment, but it is not in order to consider en bloc amendments to amendments which have not been reported. Deschler Ch 27 § 27.10. En bloc amendments to appropriation bills, see APPROPRIATIONS.

Points of Order

Where unanimous consent is requested that two or more amendments be considered en bloc, points of order against any or all of them may be

made or reserved pending agreement to the request. Deschler Ch 27 § 27.5. Amendments offered en bloc by unanimous consent are considered as one amendment, and a single point of order against any portion thereof renders the entire amendment subject to a point of order. Deschler Ch 27 § 27.5; 98–2, June 21, 1984, pp 17685–87. Since an amendment against which a point of order will be sustained should not be considered en bloc with other amendments, the Chair may request a Member seeking unanimous consent to consider amendments en bloc to withdraw his request when the manager of the bill indicates his intention to raise a point of order against one of those amendments. 96–1, June 27, 1979, pp 17029, 17030, 17069, 17070.

Consideration Pursuant to Special Rule

To expedite consideration of perfecting amendments to a bill, the House may adopt a special rule permitting their consideration en bloc in lieu of separate consideration in the order printed in the bill. 94–2, June 9, 1976, p 17064. Under such a special rule, the manager of the bill may request en bloc consideration after the pending text is read and unanimous consent is not required. 94–1, June 11, 1975, pp 18434, 18435. See also 95–1, Aug. 2, 1977, p 26172.

Voting

The en bloc consideration of amendments in Committee of the Whole pursuant to a unanimous-consent request therein does not necessarily result in an en bloc vote in the House, since that is merely an order of the Committee and not binding on the House. Moreover, even amendments considered en bloc pursuant to a special rule are subject to a demand for a division of the question in the House if divisible, unless prohibited by the rule. Deschler Ch 27 § 27.15. See also 96–1, Dec. 14, 1979, pp 36193, 36194.

''King of the Hill''

Special rules from the Committee on Rules may provide for the consideration of two or more amendments under what is sometimes termed a ''King of the Hill'' procedure. The special rule may provide that such amendments be considered in a specified order and that if more than one such amendment is adopted, only the last amendment so adopted shall be considered as finally adopted and reported to the House. 102–2, Feb. 27, 1992, p ____; 102–2, June 3, 1992, p ____.

''Top Vote Getter'' Rule

In the 104th Congress, several special rules were reported from the Committee on Rules which permitted several alternative amendments to be

considered in a specified order with the one receiving the largest majority being reported back to the House. See 104–1, Jan. 25, 1995, p ____.

§ 31. Perfecting Amendments; Motions to Strike

Preference as Between Perfecting Amendments

There are no degrees of preference as between perfecting amendments. Deschler Ch 27 § 24.1. However, perfecting amendments to a section are considered before amendments proposing to insert new sections. 8 Cannon § 2356; Deschler Ch 27 § 24.2.

Preference as Between Perfecting Amendment and Motion to Strike

All perfecting amendments to a section of a bill must be disposed of prior to the vote recurring on a pending motion to strike out the section. Deschler Ch 27 § 24.3; 90–1, Oct. 20, 1967, pp 29569–71; 93–1, July 26, 1973, pp 26120, 26122. After the first perfecting amendment has been disposed of, another may be offered and the vote on the motion to strike out is again deferred until the amendment is disposed of. 91–1, Oct. 3, 1969, pp 28454, 28459, 28463. If the perfecting amendment as adopted changes all the text proposed to be stricken, the motion to strike necessarily falls and is not voted on. Deschler Ch 27 § 24.15; 95–2, June 21, 1978, p 18286. The principle of perfecting text before considering an amendment striking it from the bill is followed even where the motion to strike out is improperly drafted as an amendment to an amendment. Deschler Ch 27 § 24.12.

§ 32. Substituting Amendments

Substitute Amendments

A substitute for an amendment is not voted on until after amendments to the amendment have been disposed of. 8 Cannon § 2895. If the substitute is rejected, the amendment is open to further amendment; if the substitute is adopted, the question recurs on the amendment as amended by the substitute. Deschler Ch 27 § 25.1. Thus, where an amendment in the nature of a substitute to a bill is amended by the adoption of a substitute therefor, the question recurs on the amendment in the nature of a substitute, as amended. Deschler Ch 27 § 25.2. The defeat of the amendment as amended by the substitute results in the rejection of the language included in the substitute as amended. 93–1, June 26, 1973, p 21320.

Amendments in the Nature of a Substitute

An amendment in the nature of a substitute for a bill may be proposed before perfecting amendments to the pending portion of the original text

have been offered or acted on, but may not be voted on until after such perfecting amendments have been disposed of. 5 Hinds § 5787; 8 Cannon § 2896; Deschler Ch 27 § 25. Thus, an amendment in the nature of a substitute having been proposed, amendments to the portion of the original text which has been read are in order and are voted on before the question is taken on the substitute. 8 Cannon § 2861.

Where a substitute—striking out all of the text and inserting new matter—for an amendment in the nature of a substitute is adopted, the vote recurs immediately on the amendment, as amended (91–2, Dec. 16, 1970, p 42032), and no further amendments to either proposition are in order, since the original amendment has been changed in its entirety by the substitute. Deschler Ch 27 § 25.

§ 33. Points of Order

Generally

Points of order may lie against amendments that do not conform to established rules and practices. For example, an amendment may be barred because it violates the rule against amendments in the third degree (§ 14, supra), or because it violates the ''germaneness'' rule (see GERMANENESS OF AMENDMENTS) or if it violates the prohibition against inclusion of legislative provisions in appropriation bills (see APPROPRIATIONS). Points of order against amendments en bloc, see § 30, supra.

Reserving Points of Order

It is within the discretion of the Chair whether to permit a reservation of a point of order against an amendment, how long such a reservation can be maintained, or to dispose of the point of order prior to debate on the amendment. 97–1, Oct. 14, 1981, pp 23882, 23884. If a point of order is reserved, the Chair, with the sufferance of the Committee of the Whole, may permit debate by the proponent on the merits of his amendment before hearing arguments on the point of order. 97–1, May 12, 1981, pp 9320, 9323. The Chair then has the discretion to insist that the point of order be made following debate by the proponent of the amendment and prior to recognition of other Members. 98–2, May 16, 1984, pp 12504–06, 12509–11. Of course, if the point of order is made rather than reserved, the Member making the point of order is immediately recognized for argument thereon, prior to debate on the merits of the amendment.

Reservation as Inuring to Other Members

One Member's reservation of a point of order against an amendment protects the rights of all Members to insist on points of order. 98–2, June

6, 1984, pp 15120–22. The reserving Member need not specify the basis of his reservation. 93–1, July 19, 1973, pp 24950, 24951. The reservation of the point of order inures to all Members, who may raise other points of order before the intervention of further debate if the original point of order is overruled or withdrawn. 92–2, June 22, 1972, p 22098.

§ 34. — Timeliness

Generally

A point of order against an amendment is properly made (or reserved) immediately after the reading thereof (89–2, Mar. 29, 1966, pp 7115, 7118; 92–1, Mar. 10, 1971, pp 5856–58; 94–1, July 8, 1975, p 21628), or following agreement to a unanimous-consent request that the amendment be considered as read (92–2, Mar. 29, 1972, pp 10749–51). And it should be disposed of before amendments to that amendment are offered. 96–1, Mar. 21, 1979, pp 5779–82. Similarly, a point of order against certain language should be decided prior to recognition of another Member to offer an amendment to the challenged language. 89–2, May 18, 1966, pp 10894–96.

Effect of Intervening Business

A Member must exercise due diligence in raising a point of order. A point of order against an amendment is not entertained where business, even the granting of a unanimous-consent request, has intervened between the reading of the amendment and the making of the point of order unless the intervening business is vacated. 91–1, June 24, 1969, p 17080. A point of order against an amendment has been held to come too late after the reading thereof and after the Chair has responded to a parliamentary inquiry from another Member. 91–1, Nov. 5, 1969, p 33133.

Effect of Debate on Amendment

A point of order against an amendment should be made or reserved before the proponent of the amendment has been recognized to debate the amendment. 95–2, Mar. 9, 1978, p 6286; 95–2, June 14, 1978, p 17626. It cannot be raised after the proponent of the amendment has been recognized and has begun his explanation of the amendment. 91–1, May 27, 1969, p 14074; 95–2, May 24, 1978, p 15332. The rereading of the amendment by unanimous consent after there has been debate does not permit the intervention of a point of order against the amendment. 92–1, Nov. 4, 1971, p 39302.

Although a point of order against an amendment ordinarily comes too late if debate has begun thereon, the Chair has recognized a Member to make or reserve a point of order against an amendment where the Member

raising the point was on his feet, seeking recognition, at the time the amendment was read. 90–1, Sept. 26, 1967, p 26878; 91–1, July 30, 1969, p 21458; 98–2, May 24, 1984, p 14271. See also Deschler Ch 27 § 1.

Points of Order Which May Be Made ''At Any Time''

Rule XXI clause 5(a) and clause 5(b) refer to points of order which may be ''raised at any time.'' Clause 5(a) deals with appropriations in bills reported by committees not having jurisdiction to report appropriations and prohibits amendments carrying appropriations during consideration of a bill reported from a committee not having that jurisdiction. Clause 5(b) is aimed at tax or tariff measures contained in a bill reported from a committee not having that jurisdiction, or amendments of the Senate or amendments in the House which are offered to a bill not reported therefrom. Points of order under these rules must still be raised when the offending bill or amendment is before the House for consideration. But intervening debate or amendments will not preclude a proper point of order from being cognizable by the Chair when raised during the pendency of the amendment under the five-minute rule. 79–2, Mar. 18, 1946, p 2365; 94–1, Apr. 28, 1975, pp 12043, 12044. See also POINTS OF ORDER; PARLIAMENTARY INQUIRIES.

§ 35. Debate on Amendments

When general debate is closed in the Committee of the Whole, any Member is allowed five minutes' debate on an amendment he offers, after which the Member who first obtains the floor has five minutes in opposition. Rule XXIII clause 5. *Manual* § 870. These time limitations do not apply, of course, where the measure is called up pursuant to a special rule which requires that a different period of time be devoted to debate. See CONSIDERATION AND DEBATE.

Where all time for debate on a section of a bill and amendments thereto has expired, amendments may still be offered to the section, but are voted on without debate, except in certain cases where a Member has caused an amendment to be printed in the Record pursuant to the House rules. Deschler Ch 27 § 14.9. Limiting debate, see CONSIDERATION AND DEBATE.

§ 36. Withdrawal of Amendment

In the Committee of the Whole

In the Committee of the Whole an amendment may not be withdrawn except by unanimous consent. 5 Hinds §§ 5221, 5753; 8 Cannon §§ 2465, 2859; Deschler Ch 27 §§ 20.1 *et seq.* The House rules so require. Rule XXIII clause 5(a). *Manual* § 870. Thus, where a Member has been recog-

nized by the Chairman to offer an amendment and the amendment has been reported by the Clerk, unanimous consent is required to withdraw the amendment. Deschler Ch 27 § 20.4; 102–1, June 19, 1991, p ____. However, unanimous consent is not required to withdraw an amendment which is at the Clerk's desk but which has not been offered by the Member. Deschler Ch 27 § 20.5.

Where a point of order is made or reserved against an amendment and a unanimous-consent request is then made for the withdrawal of the amendment, the Chair will first dispose of the unanimous-consent request. 98–1, June 7, 1983, pp 14656, 14657.

The withdrawal of an amendment by unanimous consent does not preclude its being subsequently reoffered, and unanimous consent is not required to reoffer the amendment if otherwise in order. Deschler Ch 27 § 20.10.

In the House

Although unanimous consent to withdraw an amendment is required in Committee of the Whole, in the House an amendment, whether simple or in the nature of a substitute, may be withdrawn by the proponent at any time before a decision is rendered thereon. 5 Hinds § 5753; Deschler Ch 27 § 20; 93–1, June 26, 1973, pp 21305 *et seq.* The same right to withdraw an amendment exists in the House *as in* Committee of the Whole. *Manual* § 777.

§ 37. Modification of Amendment

The proponent of an amendment may modify or amend his own pending amendment only by unanimous consent. Deschler Ch 27 §§ 21.1–21.3; 92–2, Feb. 2, 1972, pp 2180–82; 99–1, Oct. 1, 1985, p 25453. However, where there is pending an amendment and a substitute therefor, the Member who offered the original amendment may also offer an amendment to the substitute, as he is not thereby attempting to amend his own amendment. Deschler Ch 27 § 21.4.

The modification of a pending amendment by its proponent should be offered before the amendment is voted on. 95–2, July 12, 1978, p 20480. However, in one instance, pending a request for a recorded vote following a voice vote on an amendment, the Committee of the Whole, by unanimous consent, vacated the Chair's putting of the question on the amendment so as to permit its modification. Deschler Ch 27 § 21.7.

The fact that a decision of the Chair is pending on a point of order against an amendment does not necessarily preclude a request by its proponent that it be modified. Deschler Ch 27 § 21.6. However, the Chair or

any Member may insist that a proposed modification be submitted in writing (Deschler Ch 27 § 21.8; 95–2, Apr. 26, 1978, p 11637) and read by the Clerk (96–1, Oct. 18, 1979, p 28808).

In the event of objection to a unanimous-consent request to modify a pending amendment, any Member—other than the proponent of the amendment—may offer a proper amendment in writing thereto. Deschler Ch 27 § 21.10. Indeed, a request to modify an amendment, when made by a Member who is not the proponent thereof, is sometimes treated as a motion to amend rather than as a unanimous-consent request. 99–1, Dec. 5, 1985, pp 34730, 34731.

F. Effect of Adoption or Rejection; Changes After Adoption

§ 38. In General; Effect of Adoption of Perfecting Amendment

Generally

It is fundamental that it is not in order to amend an amendment previously agreed to. 8 Cannon § 2856; Deschler Ch 27 § 29.2; 89–2, Aug. 5, 1966, p 18411; 95–1, Sept. 23, 1977, p 30545. Once the text of a bill has been perfected by amendment, the perfected text cannot thereafter be amended. Deschler Ch 27 § 29.8; 94–1, Oct. 9, 1975, p 32589. Likewise, when a perfecting amendment is agreed to, further amendment of that amendment is not in order. 87–2, Apr. 18, 1962, p 6913. Similarly, the adoption of an amendment to a substitute precludes further amendment to those portions of the substitute so amended. 94–2, June 10, 1976, pp 17351, 17352.

However, in order for an amendment to be ruled out of order on the ground that its substance has already been passed on by the House, the language thereof must be practically identical to that of the proposition already acted on. 5 Hinds § 5760; 8 Cannon § 2839; Deschler Ch 27 § 29.1. The precedents do not preclude the offering of an amendment merely because it is similar to, or achieves the same effect as, an amendment previously agreed to. 98–1, May 4, 1983, pp 11046, 11052, 11056, 11059. While it is not in order to reinsert precise language stricken by amendment, an amendment similar but not identical to the stricken language may be offered if germane to the pending portion of the bill. A simple change in substance in the words sought to be inserted, such as changing the word ''shall'' to ''may,'' allows the amendment to be offered. 96–1, Apr. 9, 1979, pp 7764, 7765.

Effect of Inconsistency

The Chair will not rule out an amendment as being inconsistent with an amendment previously adopted, as the consistency of amendments is a question for the House to determine by its vote on the amendment. Deschler Ch 27 § 29.23. It follows that an amendment is not subject to a point of order that its provisions are inconsistent with a section of the bill already considered under the five-minute rule. Deschler Ch 27 § 29.25. And an amendment in the form of a new section to the bill may be offered notwithstanding its possible inconsistency with an amendment previously adopted. Deschler Ch 27 § 29.26.

Amendments Negating Proposition Previously Adopted

While the Committee of the Whole may not amend a section of a bill already passed during the reading, it may adopt an amendment to a later section which has the effect of negating the provisions of the earlier section. 90–1, Nov. 9, 1967, p 31893; 90–1, Nov. 13, 1967, p 32253. And while the Committee may not strike out or change an amendment previously agreed to, it may consider a subsequent amendment which contradicts a proposition previously agreed to. Deschler Ch 27 § 29.20.

Changes Following Amended Text

The adoption of a perfecting amendment only precludes further amendments changing the perfected text; amendments are in order which add language to an unamended portion at the end of the amended text. 96–1, May 16, 1979, pp 11369, 11420. Likewise, the adoption of an amendment inserting a new subsection in a bill does not preclude consideration of another amendment inserting another new subsection immediately thereafter which does not textually change the amendment already agreed to. 94–2, Aug. 5, 1976, p 25776.

Amendments Changing More Comprehensive Portion of Pending Text

Although an amendment may not be offered to change only that portion of the pending text which has been altered by amendment, a further amendment changing a more comprehensive portion of the pending text is in order. 95–2, May 1, 1978, p 11984. Thus, while it is not in order to further amend an amendment previously agreed to, an amendment encompassing a more comprehensive portion of the bill, including original text not yet amended, is in order. 94–1, Apr. 23, 1975, p 11543; 96–1, May 2, 1979, p 9530. See also Deschler Ch 27 § 29.9. Similarly, it is in order to offer an amendment which strikes out language changed by amendment as well as other matter and inserts language which proposes substantive changes going beyond the

original amendment (96–1, July 31, 1979, p 21615), or strikes out matter not only in the amendment previously agreed to but also in additional portions of the pending bill. 94–1, Aug. 1, 1975, p 26947; 94–2, Apr. 28, 1976, p 11599.

Effect of Special Rule

The general principle that an amendment may not be offered which directly changes an amendment already agreed to does not apply where the House has adopted a special rule permitting amendments to be offered even if changing portions of amendments already agreed to. Deschler Ch 27 § 29.48.

§ 39. Adoption of Amendment as Precluding Motions to Strike

It is not in order to offer an amendment merely striking out an amendment previously agreed to. 94–1, Aug. 1, 1975, pp 26946, 26947. For example, where by amendment a new paragraph or section has been added to the text, it is not in order to offer an amendment that merely strikes out that new paragraph or section. Deschler Ch 27 § 30.10; 94–1, Apr. 23, 1975, p 11550.

On the other hand, the adoption of a perfecting amendment to a *portion* of the text of a bill does not preclude a vote on a pending motion to strike out the entire text as amended. Deschler Ch 27 § 30.4. Similarly, although a provision inserted by amendment may not thereafter be stricken, a motion to strike more than the provision previously inserted is in order. 86–2, June 22, 1960, pp 13874–80; 94–1, Apr. 23, 1975, p 11536; 94–1, Oct. 30, 1975, p 34415; see also Deschler Ch 27 § 30.7.

While the adoption of an amendment changing all the text of a section precludes a vote on a pending motion to strike out that section, the motion to strike will still be voted on where the perfecting amendment to the section changes some but not all of that text. Deschler Ch 27 § 30.3. However, in this situation another perfecting amendment to strike out the remainder of the section not yet perfected may be offered and voted on prior to the motion to strike the entire section and, if adopted, the motion to strike the section would then fall, the whole text having been changed. 94–1, Sept. 29, 1975, pp 30772, 30773.

The adoption of a perfecting amendment to part of a section does not preclude a motion to strike out the section and insert new text. Deschler Ch 27 § 30.12. Similarly, the adoption of a perfecting amendment inserting language at the end of a paragraph does not preclude an amendment striking the entire perfected paragraph and inserting new language. Deschler Ch 27 § 30.15. But where a bill is being read by sections, and committee amend-

ments adding new sections at the end of a bill have been adopted, an amendment proposing to strike out a section of the original bill and the new sections is not in order. 92–1, Mar. 10, 1971, pp 5856–58.

§ 40. Effect of Adoption of Motions to Strike

Adoption of Motion to Strike Out

A motion to strike a section of a bill, if adopted by the Committee of the Whole, strikes the entire section including a provision that was added as a perfecting amendment to that section. Adoption by the Committee of the amendment striking out the section vitiates the Committee's prior adoption of perfecting amendments to that section, and only the motion to strike out is reported to the House. Deschler Ch 27 §§ 31.1, 31.2. The bill returns to the form as originally introduced upon rejection by the House of the amendment reported from Committee. Deschler Ch 27 § 31.3. Where an amendment has been adopted striking out language in a bill, a perfecting amendment to the stricken language comes too late and is not in order. Deschler Ch 27 § 31.9. Thus, where the Committee of the Whole has adopted an amendment striking out several consecutive paragraphs in a bill, an amendment proposing to insert language in a paragraph which had been stricken comes too late. 93–1, July 16, 1973, pp 23970, 23983, 23984.

While it is not in order to reinsert precise language stricken by amendment, an amendment similar but not identical to the stricken language may be offered if germane to the pending portion of the bill. Deschler Ch 27 § 31.6.

Adoption of Motion to Strike Out and Insert

If an amendment to strike out a portion of a bill and insert new language is agreed to, a pending amendment proposing to strike out the same portion falls and is not voted on. Deschler Ch 27 §§ 31.11, 31.12; 96–1, Oct. 23, 1979, pp 29185, 29187. And when an amendment striking out certain language and inserting other provisions has been adopted, it is not in order to further amend the provisions so inserted. Deschler Ch 27 § 31.14; 87–1, May 16, 1961, pp 8117, 8120; 87–1, June 22, 1961, pp 11093–98, 11100–03.

The adoption of a perfecting amendment to strike out and insert does not preclude the offering of another amendment to strike out and insert which goes beyond the changes made by the first amendment. Deschler Ch 27 § 31.18. Similarly, while it is not in order to perfect or reinsert language which has been stricken, an amendment may be offered to insert new language if it is germane to the bill and not identical to the language stricken.

94–2, Sept. 2, 1976, p 28958. However, if a motion to strike out all after the first word of text and insert a new provision is agreed to, the language thus inserted cannot thereafter be amended. 88–2, Feb. 7, 1964, p 2489.

§ 41. Adoption of Amendment in Nature of Substitute

Where an amendment in the nature of a substitute is agreed to, further amendment is not in order. 88–2, Aug. 7, 1964, p 18608; see also Deschler Ch 27 §§ 32.1, 32.2. Since the stage of amendment is passed, further amendments, including pro forma amendments for debate, are not in order. 95–1, May 13, 1977, p 14622. Thus, absent a special rule to the contrary, the adoption of an amendment in the nature of a substitute precludes the offering of another. Deschler Ch 27 § 32.4. Debate having been closed, adoption of the amendment causes the stage of amendment to be passed and amendments—though printed in the *Congressional Record*—cannot thereafter be offered to the bill. Deschler Ch 27 § 32.3.

The adoption of an amendment in the nature of a substitute, as amended by a substitute, precludes further amendment to the amendment and to the bill. Deschler Ch 27 § 32.8. When the substitute is agreed to, the question recurs immediately on the amendment as amended by the substitute, and further perfecting amendments to the amendment (including ''pro forma'' amendments) are not then in order. 94–2, Feb. 5, 1976, p 2649; 96–2, Feb. 25, 1980, p 3628.

§ 42. Amendments Pertaining to Monetary Figures

When a specific amendment to a monetary figure in a bill has been agreed to, further amendment of that specific sum is not in order. Deschler Ch 27 §§ 33.1–33.3. The adoption of an amendment changing a figure in a bill precludes the offering of a subsequent amendment further changing that figure. 99–1, July 17, 1985, p 19444; 99–1, July 18, 1985, pp 19648, 19649, 19652; 104–1, Mar. 15, 16, 1995, p ____. However, an amendment inserted following the figure agreed upon and providing funds ''in addition thereto'' is in order. Deschler Ch 27 § 33.13. An amendment adding a new section having the indirect affect of changing amended amounts in the bill may also be in order. 99–1, July 31, 1985, p 21911.

Where the Committee of the Whole has adopted an amendment changing the total figure in a paragraph of an appropriation bill, it is not in order to further amend such figure. Deschler Ch 27 § 33.9.

Although it is not in order to offer an amendment merely changing an amendment already adopted, it is in order to offer a subsequent amendment more comprehensive than the amendment adopted, changing unamended

portions of the bill as well. Deschler Ch 27 § 33.7 (note). Thus, after adoption of amendments changing monetary figures in a bill, an amendment making a general percentage reduction in all figures contained in the bill and indirectly affecting those figures, is still in order. Deschler Ch 27 § 33.10. Likewise, the adoption of a perfecting amendment to a concurrent resolution on the budget changing several figures would preclude further amendment merely changing those amended figures but would not preclude more comprehensive amendments changing other portions of the resolution which had not been amended. 95–1, Apr. 27, 1977, p 12485.

Although it may be in order to offer an amendment to the pending portion of the bill that changes not only a provision already amended but also an unamended pending portion of the bill, it is not in order merely to amend a figure already amended. *Manual* § 469. Even if the amendment also changes other matter not already amended, where it is drafted as though the earlier amendment had not been adopted, it is still out of order. 104–1, Mar. 15, 1995, p ____.

§ 43. Effecting Changes by Unanimous Consent

By unanimous consent, it is in order to amend an amendment which has already been agreed to. Deschler Ch 27 § 34.1. For example, the Committee of the Whole may by unanimous consent:

- Permit consideration of amendments to change amendments already adopted. 98–2, June 28, 1984, p 19948.
- Permit Members to offer amendments to change an amended figure in an appropriation bill. Deschler Ch 27 § 34.7.
- Permit an amendment which has been adopted to an amendment to be considered as adopted, in identical form, to a pending substitute for the amendment. 99–2, Aug. 5, 1986, pp 19107, 19108.
- Permit a modification of an amendment by its proponent. 96–2, Jan. 29, 1980, pp 958–60.

In one instance, the Committee of the Whole by unanimous consent vacated the proceedings whereby it had agreed to an amendment, agreed to an amendment to that amendment, and then adopted the original amendment as amended. Deschler Ch 27 § 34.2.

§ 44. Amendments Previously Considered and Rejected

Generally

It is not in order to offer an amendment identical to one previously rejected. Deschler Ch 27 §§ 35.1, 35.2. However, an amendment that raises the same question by the use of different language may be admissible.

Deschler Ch 27 § 35. An amendment similar but not identical thereto may be considered (Deschler Ch 27 § 35.4) if a substantive change has been made (Deschler Ch 27 § 35.3). Rejection of an amendment changing a figure in a bill does not preclude the offering of a different amendment to that provision. 97–1, Nov. 18, 1981, p 28048.

An amendment in different form may be entertained even though its effect may be similar to that of the rejected amendment. Deschler Ch 27 §§ 35.11, 35.13. See also 86–2, Mar. 21, 1960, p 6159; 90–1, July 19, 1967, pp 19418, 19423; 94–1, Sept. 23, 1975, p 29841. Thus, in one instance, after an amendment containing a limitation on the use of funds in an appropriation bill had been rejected, the Chair held that another amendment—containing a similar limitation and also stating an exception from that limitation—was not an identical amendment and could be offered. Deschler Ch 27 § 35.18. Presiding officers have been reluctant to rule out an amendment as dilatory merely because of a similarity to one previously rejected. Deschler Ch 27 § 35.7.

A motion offered as a substitute for an amendment and rejected may be offered again as a separate amendment. Deschler Ch 27 § 35.8. And a proposition offered as an amendment to an amendment and rejected may be offered again, in identical form, as an amendment to the bill. Deschler Ch 27 § 35.9.

A portion of a rejected amendment may be subsequently offered as a separate amendment if presenting a different proposition. Thus, rejection of an amendment consisting of two sections does not preclude one of those sections being subsequently offered as a separate amendment. 97–1, July 15, 1981, p 15899.

Rejection of Motion to Strike

A motion to strike out certain language having been previously rejected, it may not be offered a second time. Deschler Ch 27 § 35.22. But a motion to strike out that language and insert a new provision is in order. Deschler Ch 27 § 35.23. Conversely, if the motion to strike out and insert is rejected, the simple motion to strike out is in order. Deschler Ch 27 § 35.11.

Rejection of En Bloc Amendments

Rejection of several amendments considered en bloc by unanimous consent does not preclude their being offered separately at a subsequent time. Deschler Ch 27 § 35.15. It follows that where an amendment to a figure in a bill considered en bloc with other amendments has been rejected, no point of order lies against a subsequent amendment to that figure which specifies

a different amount and which is offered as a separate amendment. 95–2, Aug. 7, 1978, p 24702.

G. House Consideration of Amendments Reported From Committee of the Whole

§ 45. In General; Voting

Generally

Only amendments adopted in the Committee of the Whole are reported to the House; and all amendments so reported stand on an equal footing and must be voted on by the House (4 Hinds § 4871), notwithstanding inconsistencies among them (4 Hinds § 4881), and are subject to amendment in the House unless the previous question is ordered (8 Cannon § 2419). Where it is in order to submit additional amendments to the pending bill, the first question is on the amendments reported from the Committee of the Whole. 4 Hinds § 4872.

Kinds of Amendments Reported to the House

Some amendments adopted in the Committee are not reported to the House. Pursuant to a practice originating in the Nineteenth Congress, the Committee reports amendments only in their perfected form. 4 Hinds § 4904; Deschler Ch 27 §§ 36.1 *et seq.* Thus, if the Committee of the Whole perfects a bill by adopting certain amendments and then adopts an amendment striking out those provisions and inserting a new text, only the bill, as amended by the motion to strike out and insert, is reported to the House. Deschler Ch 27 §§ 36.5, 36.13. Similarly, the adoption by the Committee of an amendment striking out a section of a bill vitiates the Committee's prior adoption of perfecting amendments to that section, so that only the motion to strike out is reported to the House. 93–2, Feb. 5, 1974, pp 2078, 2079. But when the bill is being considered under a special rule permitting separate consideration in the House of *any* amendments adopted in the Committee, all amendments adopted in the Committee are reported to the House, regardless of their inconsistency. Deschler Ch 27 § 36.13.

Demanding a Separate Vote

While it is a frequent practice for the House by unanimous consent, to act at once—*en grosse*—on all the amendments to a bill reported from the Committee of the Whole, it is the right of any Member to demand a separate vote on any reported first degree amendment. 4 Hinds §§ 4893, 4894; 8 Cannon § 2419. However, in the absence of a special rule providing there-

for, a separate vote may not be had in the House on an amendment to an amendment which has been adopted by the Committee of the Whole. Deschler Ch 27 § 36.6; 90–1, Sept. 12, 1967, p 25228; 90–2, July 16, 1968, p 21545. This principle precludes a separate vote in the House on an amendment to an amendment in the nature of a substitute adopted in the Committee. Deschler Ch 27 § 36.8; 90–1, Oct. 18, 1967, p 29317. Since the Committee in reporting a bill with an amendment to the House reports such amendment in its perfected form, it is not in order in the House to have a separate vote upon each perfecting amendment to the amendment that has been agreed to in the Committee absent a special rule providing to the contrary. Deschler Ch 27 § 36.

A special rule may, of course, provide for separate votes on second-degree amendments. Deschler Ch 27 § 36. But where separate votes are permitted, only those amendments reported to the House from the Committee of the Whole are voted on; it is not in order to demand a separate vote in the House on amendments rejected in the Committee. Deschler Ch 27 § 36.12. The House theoretically has no information as to actions of the Committee of the Whole on amendments not reported therefrom. Deschler Ch 27 § 36.

Where a special rule permits a demand in the House for a separate vote on an amendment adopted to an amendment in the nature of a substitute for a bill reported from the Committee of the Whole, the Speaker inquires whether a separate vote is demanded before putting the question on the amendment in the nature of a substitute. Deschler Ch 27 § 36.14. A Member must demand the separate vote before the question is taken on the substitute. Deschler Ch 27 § 36.18. A demand in the House for a separate vote on an amendment to the amendment comes too late after the amendment, as amended, has been agreed to. Deschler Ch 27 § 36.19.

En Bloc Amendments

Where the Committee of the Whole reports a bill back to the House with amendments, some of which were considered en bloc pursuant to a special rule, the en bloc amendments may be voted on again en bloc on a demand for a separate vote. Deschler Ch 27 § 36.27. A separate vote being demanded, the Chair puts the question separately on the amendments en bloc in the House, where no Member demands a division of the question. 96–1, Mar. 29, 1979, pp 6810, 6819. But another amendment separately considered in Committee may not be voted on with the en bloc amendments in the House (absent unanimous consent). Deschler Ch 27 § 36.27.

Division of an amendment for voting, see VOTING.

Order of Consideration

When demand is made for separate votes in the House on several amendments adopted in the Committee of the Whole, such amendments are read and voted on in the House in the order in which they appear in the bill as reported from the Committee of the Whole—not in the order in which agreed to in Committee or in which demanded in the House. Deschler Ch 27 §§ 36.16, 37.1. See also 93–1, July 19, 1973, pp 24959, 24965, 24966; 94–2, June 24, 1976, p 20424.

When a special rule provides for a separate vote on an amendment to an amendment in the nature of a substitute reported from the Committee of the Whole, the vote first recurs on the amendment on which the separate vote is demanded. Deschler Ch 27 § 37.6. The Speaker puts the question first on those amendments on which a separate vote is demanded, then on the amendment, as amended. See 89–2, Oct. 6, 1966, pp 25585–87. But where a special rule prescribes the order for consideration of amendments (with the bill being considered as read) in the Committee of the Whole, then separate votes demanded in the House on adopted amendments are taken in that same order, regardless of the order in which the amendments may appear in the bill. 103–1, Mar. 11, 1993, p ____; 103–1, Mar. 25, 1993, p ____.

§ 46. Effect of Rejection of Amendment

Generally

When the House rejects an amendment adopted in the Committee of the Whole, the original text of the bill is before the House. Deschler Ch 27 § 38.1. Thus, if an amendment in the nature of a substitute is reported from the Committee of the Whole and rejected by the House, the original bill is before the House. Deschler Ch 27 § 38.5. Similarly, if an amendment striking out and inserting is reported from the Committee of the Whole and rejected by the House, the language of the original bill is before the House. Deschler Ch 27 § 38.12; 95–2, Aug. 2, 1978, p 23955.

Rejection of Motion to Strike Out

Where the Committee of the Whole adopts perfecting amendments to language of a bill and then agrees to an amendment striking out that language, only the latter amendment is reported to the House, and in the event of its rejection in the House the original language, and not the perfected text, is before the House. Deschler Ch 37 §§ 38.3, 38.8. However, the practice may be otherwise where the House is operating under a special rule allowing separate votes in the House on *any* amendment adopted in the

Committee of the Whole. As indicated elsewhere (§ 45, supra), under such a rule all amendments adopted in Committee to the amendment are reported to the House regardless of their inconsistency; and the House may retain a section as perfected in Committee of the Whole by first adopting on separate votes the perfecting amendments to the section and then rejecting on a separate vote the motion to strike that section. Deschler Ch 27 § 38.11 (note).

§ 47. Motions to Recommit With Instructions Pertaining to Amendments

The House may recommit a bill to committee with instructions to report it back ''forthwith'' with an amendment. 5 Hinds § 5545; 88–1, Dec. 16, 1963, pp 24757–59; 89–2, June 1, 1966, p 11905. In such cases the chairman of the committee reports the amendment at once without awaiting committee action. 5 Hinds §§ 5545–5547. Instructions to report ''forthwith'' accompanying a motion to recommit must be complied with immediately. 87–1, Sept. 13, 1961, p 19208. However, it is not in order to propose as instructions anything that might not be proposed directly as an amendment (5 Hinds §§ 5529–5541; 8 Cannon § 2705), such as to eliminate an amendment already adopted by the House (8 Cannon § 2712), to propose an amendment that is not germane to the bill (102–2, Sept. 23, 1992, p ____), or to propose an amendment containing legislation or a limitation on a general appropriation bill (94–2, Sept. 1, 1976, pp 28883–84; 101–1, Aug. 1, 3, 1989, pp ____).

A motion to recommit may not include instructions to modify any part of an amendment previously agreed to by the House. 8 Cannon §§ 2720, 2721, 2740; Deschler Ch 27 § 32.5. However, where a bill is being considered under a special rule permitting a motion to recommit ''with or without instructions,'' a motion to recommit may include an amendment which changes an amendment already adopted by the House (94–2, May 12, 1976, p 13537), even where the House has adopted an amendment in the nature of a substitute (89–1, Sept. 29, 1965, p 25438). Generally, see REFER AND RECOMMIT.

The rejection of an amendment in the Committee of the Whole does not preclude the offering of the same amendment in the House in a motion to recommit with instructions. Deschler Ch 27 § 35.27.

H. Amendments to Titles and Preambles

§ 48. In General

Amending Titles

Amendments to the title of a bill are not in order until after passage of the bill, and are then voted upon without debate. Deschler Ch 24 § 9.4; Deschler Ch 27 § 19.1. Under Rule XIX (*Manual* § 822), the title of a bill can only be amended after the bill has been passed, and an amendment in Committee of the Whole proposing an amendment to the title is not in order. Deschler Ch 27 § 19.4. Committee amendments to the title of a bill are automatically reported by the Clerk after passage of the bill, although an amendment to a committee amendment to the title may be offered from the floor. Deschler Ch 27 § 19.6. See also 88–2, Jan. 21, 1964, p 759.

Amending Preambles of Joint Resolutions

In the Committee of the Whole, amendments to the preamble of a joint resolution are considered following disposition of any amendments to the text. Deschler Ch 27 § 19.7. That is, the body of the resolution is first considered and then the preamble is considered and perfected. 87–2, Oct. 5, 1962, p 22637. See also Deschler Ch 27 § 19.8. In the House, an amendment to the preamble of a joint resolution reported from Committee of the Whole is considered following engrossment and prior to the third reading of the resolution. 4 Hinds § 3414; Deschler Ch 27 § 19.9. See also 89–2, Oct. 7, 1966, p 25684.

An amendment to the preamble of a Senate joint resolution is considered after disposition of amendments to the text of the joint resolution and pending the third reading. 97–1, Nov. 19, 1981, pp 28208, 28209.

Amending Preambles of Simple or Concurrent Resolutions

Amendments to the preamble of a simple or concurrent resolution are considered and voted on in the Committee of the Whole after amendments to the body of the resolution. Amendments to the preamble of such a resolution are voted on in the House after the resolution has been adopted. Deschler Ch 27 §§ 19.11–19.13. See also 7 Cannon § 1064. In the House, the previous question is ordered separately on the preamble after adoption of the resolution if amendments to the preamble are offered. Deschler Ch 24 § 9.9.

I. Amendments Containing Unfunded Mandates

§ 49. In General

In the 104th Congress, Public Law No. 104–4 added new sections 425 and 426 of the Congressional Budget Act to permit points of order against amendments increasing the direct costs of federal intergovernmental mandates by an amount exceeding certain thresholds. Those points of order against amendments are debatable for 20 minutes and are thereafter disposed of, not by a ruling of the Chair, but by a vote of the House or Committee of the Whole when the Chair states the question of consideration on the amendment. Notwithstanding this provision, it is always in order, unless specifically waived by terms of a special rule, to move to strike any such federal mandate from the portion of the bill then open to amendment. Rule XXIII clause 5(c).

Appeals

Research References
5 Hinds §§ 6877, 6938–6952
8 Cannon §§ 3435, 3452–3458
Manual §§ 379, 624, 628, 637, 753, 803, 900

§ 1. In General; Forms

The right to appeal from a decision of the Chair on a question of order is derived from the English Parliament (*Manual* § 379) and is recognized under a rule (Rule I clause 4) of the House dating from 1789. *Manual* § 624. This right of appeal, which may be invoked by any Member, protects the House against arbitrary control by the Speaker. 5 Hinds § 6002.

MEMBER: I respectfully appeal from the decision of the Chair.
CHAIR: The question is, shall the decision of the Chair stand as the judgment of the House [or the Committee]?

An appeal is debatable but is subject to the motions for the previous question or to table in the House. §§ 4, 5, infra. The vote on the appeal may be taken by roll call. 98–2, June 26, 1984, p 18861. A majority vote sustains the ruling appealed from (101–1, Aug. 1, 1989, p ____), and the weight of precedent indicates that a tie vote (especially where the Chair has not voted to make the tie) does as well. (4 Hinds § 4569; see also 5 Hinds § 6957). The Chair may vote to make or break a tie (4 Hinds § 4569; 5 Hinds § 5686) and may cast a vote in favor of his own decision (5 Hinds § 6956).

An appeal from a ruling of the Chair goes only to the propriety of the ruling; the vote thereon should not be interpreted as a vote on the merits of the issue at hand. 102–1, June 26, 1991, p ____.

§ 2. When in Order

The right of appeal from decisions of the Speaker on questions of order is specifically provided for by the House rules (Rule I clause 4). An appeal may also be taken from the ruling of the Chairman of the Committee of the Whole on a question of order. 8 Cannon §§ 3454, 3455; 95–1, June 7, 1977, p 17714; 96–1, May 16, 1979, p 1172. For example, an appeal may be taken from a ruling of the Chair on the germaneness of an amendment (98–2, June 26, 1984, p 18861) and has been entertained on the question of whether a certain motion or resolution gives rise to a question of privilege (99–1, Apr. 25, 1985, p 9419; 104–1, Feb. 7, 1995, p ____). Decisions relating to the priority of business are also subject to appeal. 5 Hinds § 6952. It has been held that an appeal is in order during a call of the House. 6 Cannon § 681.

§ 3. When Not in Order

The Speaker's decision on a question of order is not subject to an appeal if the decision is one which falls within the discretionary authority of the Chair. Rulings on questions involving vote counts, for example, traditionally fall within this category. Thus, the Chair's count of Members standing to support a demand for a recorded vote under Rule I clause 5 is not subject to challenge by appeal (94–2, June 24, 1976, p 20391). No appeal lies from the Speaker's count of the House to determine whether one-fifth of those Members present have risen to order the yeas and nays (95–2, Sept. 12, 1978, p 28949), from the Chair's call of a voice vote, or from the Chair's count of a quorum (93–2, July 24, 1974, p 25012).

Similarly, because the Chair is exercising discretionary authority, no appeal lies from:

- Responses to parliamentary inquiries. 5 Hinds § 6955; 8 Cannon § 3457.
- Decisions on recognition. 2 Hinds §§ 1425–1428; 8 Cannon §§ 2429, 2646, 2762; 102–2, Feb. 27, 1992, p ____.
- Decisions on dilatoriness of motions. 5 Hinds § 5731; *Manual* § 803.
- Decisions refusing a recapitulation of a vote. 8 Cannon § 3128.

An appeal from a ruling of the Chair declining to consider the question of the constitutionality of a provision is not in order. The question of the constitutionality of a provision in a pending measure is a matter for the House to determine by its vote on the merits, rather than by voting on a possible appeal from the Chair's decision declining to rule on that constitutional issue. 93–1, May 10, 1973, pp 15290, 15291.

Appeals Changing a House Rule

An appeal from a ruling of the Chair is not in order if the effect of the appeal, if sustained, would be to change a rule of the House, the operative rule allowing the Chair no discretionary or interpretive authority. Thus, the Speaker's refusal under Rule XV clause 6(e) to entertain a point of order of no quorum when a pending question has not been put to a vote is not subject to an appeal, since that rule contains an absolute and unambiguous prohibition against such a point of order; to allow an appeal in such a case would permit a direct change in the rule itself. 95–1, Sept. 16, 1977, p 29594.

Untimely Appeals

An appeal is not in order if it is dilatory (8 Cannon § 2822) or if it is untimely. An appeal is not in order:

- While another appeal is pending. 5 Hinds §§ 6939–6941.
- On a question on which an appeal has just been decided. 4 Hinds § 3036; 5 Hinds § 6877.
- During a call of the yeas and nays. 5 Hinds § 6051.
- Between the motion to adjourn and vote thereon. 5 Hinds § 5361.

§ 4. Debate on Appeal

Appeals are customarily subject to debate, both in the House and the Committee of the Whole (8 Cannon §§ 3453–3455), with recognition being at the discretion of the Chair (8 Cannon § 2347). However, debate is not in order on an appeal from a ruling of the Chair on the priority of business (5 Hinds § 6952) or on a ruling as to the relevancy of discussion on the floor (5 Hinds §§ 5056–5063).

Debate in the House on an appeal is under the hour rule, but may be closed at any time by the adoption of a motion for the previous question or to lay on the table. *Manual* § 628. Debate on an appeal in the Committee of the Whole is under the five-minute rule (8 Cannon §§ 2347, 3454, 3455), and may be closed by motion to close debate or to rise and report. 5 Hinds §§ 6947, 6950; 8 Cannon § 3453.

Members may speak but once on appeal, unless by permission of the House (*Manual* § 624), the Chair alternating between those favoring and those opposing. 8 Cannon § 3455.

It is not in order in debating an appeal to discuss the merits of the proposition under consideration at the time the decision was made. 5 Hinds § 5055.

§ 5. Motions

After argument is heard on an appeal, a motion to lay the appeal on the table is in order. If the motion is adopted, the appeal is disposed of adversely (92–1, July 7, 1971, p 23810) and the ruling of the Speaker is sustained. 102–2, June 16, 1992, p ____. Thus, an appeal from the Speaker's decision—that a resolution did not present a question of the privileges of the House—has been laid on the table. 93–2, June 27, 1974, pp 21596–98. And the House has tabled a motion to reconsider the vote whereby an appeal from a decision of the Chair was laid on the table. 90–2, Oct. 8, 1968, pp 30214–16. An appeal in Committee of the Whole may not be laid on the table, since that motion does not lie in the Committee. 4 Hinds § 4719.

Other motions that may be offered pending an appeal include:

- A motion to postpone the appeal to a day certain (in the House). 8 Cannon § 2613.
- A motion for the previous question (in the House). 5 Hinds § 6947.
- A motion to close or limit debate (in the Committee of the Whole). 5 Hinds §§ 6947, 6950.
- A motion that the Committee rise and report to the House. 8 Cannon § 3453.

§ 6. Withdrawal

An appeal may be withdrawn at any time before action thereon by the House. 5 Hinds § 5354. An appeal can be withdrawn before the question is put on a motion to lay the appeal on the table. See 90–1, Nov. 28, 1967, p 34032. Ordering the yeas and nays on a motion to lay an appeal on the table has been held sufficient House action as to preclude withdrawal. 5 Hinds § 5354.

§ 7. Effect of Adjournment

An appeal pending at adjournment at the end of the day ordinarily comes up for consideration on the next legislative day. 5 Hinds § 6945. However, an appeal pending at adjournment on a day set apart for Private Calendar business and related to private business goes over to the next day provided for consideration of business on the Private Calendar. Where the House has adjourned and reconvened to meet again on the same calendar day and the call of the Private Calendar is still in order, the appeal comes up as unfinished business. See 97–1, Nov. 17, 1981, pp 27772, 27773.

Appropriations

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Research References

U.S. Const. art. I § 7
U.S. Const. art. I § 9
4 Hinds §§ 3553–4018
7 Cannon §§ 1116–1720
7 Deschler Chs 25, 26
Manual §§ 143, 671a, 671b, 694c, 726, 834–848, 1007–1012

I. Introductory

§ 1. In General; Constitutional Background

The source of the congressional power to appropriate is found in the Constitution. Article I (§ 7 clause 1) provides that no money ''shall be drawn from the Treasury'' but in consequence of appropriations made by law. U.S. Const. art. I § 9 clause 7. Appropriation bills are the device through which money is permitted to be ''drawn from the Treasury'' for expenditure. Deschler Ch 25 § 2.

This constitutional provision is construed as giving Congress broad powers to appropriate money in the Treasury and as a strict limitation on the authority of the executive branch to exercise this function. The Supreme Court has recognized that Congress has a wide discretion with regard to the details of expenditures for which it appropriates funds and has approved the frequent practice of making general appropriations of large amounts to be allotted and expended as directed by designated government agencies. *Cincinnati Soap Co.* v *United States*, 301 US 308, 322 (1937).

§ 2. Power to Originate Appropriation Bills; House and Senate Roles

Under the Constitution, it is exclusively the prerogative of the House to originate ''revenue'' bills. Article I § 7 clause 1 provides:

> All Bills for raising Revenue shall originate in the House of Representatives; but the Senate may propose or concur with Amendments as on other Bills.

The House has traditionally taken the view that this prerogative encompasses the sole power to originate all general appropriation bills. Deschler

Ch 25 § 13. (And on more than one occasion the House has returned to the Senate a Senate bill or joint resolution appropriating money on the ground that it invaded the prerogatives of the House. Deschler Ch 13 §§ 20.2, 20.3.) In 1962, when the Senate passed a joint resolution continuing funds for the Department of Agriculture, the House passed a resolution declaring that the Senate's action violated Article I § 7 of the Constitution and was an infringement of the privileges of the House. Deschler Ch 13 § 20.2. In support of the view that the House has the sole power to originate appropriation bills, it has been noted that at the time of the adoption of the Constitution the phrase ''raising revenue'' was equivalent to ''raising money and appropriating the same.'' The Supply Bills. S. Doc. No. 872, 62d Cong. 1st Sess.

§ 3. Definitions; Kinds of Appropriation Measures

Generally

An appropriation is a provision of law that provides budget authority for federal agencies to incur obligations. ''Budget authority'' means the authority provided by law to incur financial obligations as defined by the Congressional Budget Act of 1974, § 3(2)(A).

An appropriation act is the most common means of providing budget authority. Deschler Ch 25 § 2. It has been held that language which authorizes the Secretary of the Treasury to use the proceeds of public-debt issues for the purposes of making loans is not an appropriation. Deschler Ch 25 § 4.43.

Types of Appropriation Acts

The principal types of appropriation acts are general, supplemental, special, and continuing.

- General appropriation bills provide budget authority to agencies, usually for a specified fiscal year. Today, there are 13 regular appropriation acts for each fiscal year. See § 6, infra.
- A supplemental appropriation is an act appropriating funds in addition to those in the 13 regular annual appropriation acts. Supplemental appropriations provide additional budget authority beyond the original estimates for an agency or program. Such a bill may be used after the fiscal year has begun to provide additional funding. Supplemental bills may also be ''general'' bills within the meaning of Rules XI and XXI if covering more than one agency. See § 73, infra.

- A special appropriation provides funds for one government agency, program or project. See § 74, infra.
- Continuing appropriations—also known as continuing resolutions—provide temporary funding for agencies or programs that have not received a regular appropriation by the start of the fiscal year. They are used to permit agencies to continue to function and to operate their programs until their regular appropriations become law. Continuing resolutions are usually of short duration, but they have been used to fund agencies or departments for an entire fiscal year. See § 72, infra.

Privileged and Nonprivileged Appropriations Distinguished

The term ''general appropriation bill'' is used to refer to those bills which may be reported at any time and are privileged for consideration. See § 6, infra. A joint resolution continuing appropriations may also be reported and called up as privileged if reported after September 15 preceding the beginning of the fiscal year for which it is applicable. § 72, infra. Other continuing appropriation measures, and special appropriation bills, are not privileged and are therefor considered under other procedures which give them privilege—such as a unanimous-consent agreement, a special order reported from the Committee on Rules, or under suspension. Deschler Ch 25 §§ 6, 7.

To file a report on a general appropriation bill, a member of the Committee on Appropriations seeks recognition and presents the report as folows:

> THE MEMBER: Mr. Speaker, by direction of the Committee on Appropriations, I submit the report on the bill making appropriations for the Departments of _____ for printing under the rule.
>
> THE SPEAKER: The report is referred to the Union Calendar and ordered printed.

§ 4. Committee and Administrative Expenses

Generally

Funding for House committees is provided by resolutions, which allocate resources made available to the House in certain accounts in annual Legislative Branch Appropriation Acts. Authorization for payment may be obtained pursuant to House Rule XI clause 5, which provides detailed provisions for the consideration of a primary expense resolution and for subsequent supplemental expense resolutions. With the exception of the Appropriations Committee, the rule applies to ''any committee, commission or other entity.'' *Manual* § 732a. Generally, see COMMITTEES.

The authority of all committees to incur expenses, including travel expenses, is made contingent upon adoption by the House of resolutions re-

ported pursuant to this rule. See clause 1(b), Rule XI. The rule was amended in 1977 to extend its applicability to committees and entities other than standing committees. H. Res. 988, 93d Cong.

Appropriations from accounts for salaries and other administrative expenses of the House are under the jurisdiction of the Committee on House Oversight. Rule X clause 1(h). *Manual* § 677a. A resolution reported by that committee providing for such an expenditure is called up as privileged. Rule XI clause 4(a). Such a resolution, if not formally reported by the committee, may be called up and agreed to by unanimous consent. 94–1, Jan. 23, 1975, pp 1160, 1161.

§ 5. Authorization, Appropriation, and Budget Processes Distinguished

There are three phases in the complex process by which Congress allocates the fiscal resources of the federal government. There is an authorization process under which federal programs are created, amended and extended in response to national needs. There is an appropriations process which provides funding for these programs. The congressional budget process, which may place spending ceilings on budget authority and outlays for a fiscal year and otherwise provides a mechanism for allocating federal resources among competing government programs, interacts with and shapes both of the other phases. The budget process is treated separately in this work.

In the authorization phase, the legislative committees establish program objectives and may set dollar ceilings on the amounts that may be appropriated. Once this authorization stage is complete for a particular program or department, the Appropriations Committee recommends the actual level of ''budget authority,'' which allows federal agencies to enter into obligations. Occasionally, with the consent of the House, the appropriation process precedes the authorization phase. Special orders reported from the Committee on Rules are often utilized to expedite floor consideration of appropriation bills. The House may decline to appropriate funds for particular purposes, even though authorization has been enacted. Deschler Ch 25 § 2.1.

As a general rule, these two stages should be kept separate. With certain exceptions, authorization bills should not contain appropriations (§ 76, infra), and, again with certain exceptions, appropriation bills should not contain authorizations (§§ 27 *et seq.*, infra). This general rule is complicated by the fact that some budget authority becomes available as the result of previously enacted legislation and does not require current action by Congress. Examples include the various trust funds for which the obligational authority

is already provided in basic law. § 9, infra. In addition some spending, sometimes referred to as direct spending, is controlled outside of the annual appropriations process. It is composed of entitlement and other mandatory spending programs. Such programs are generally funded by provisions of the permanent laws that created them. See BUDGET PROCESS. Moreover, the authorization for a program may be derived not from a specific law providing authority for that particular program but from more general existing law—''organic'' law—mandating or permitting such programs. Thus, a paragraph in a general appropriation bill purportedly containing funds not yet specifically authorized by separate legislation was upheld where it was shown that all of the funds in the paragraph were authorized by more general provisions of law currently applicable to the programs in question. 95-2, June 8, 1978, p 16778.

II. General Appropriation Bills

A. Introductory

§ 6. Background; What Constitutes a General Appropriation Bill

Today, much of the federal government is funded through the annual enactment of 13 regular appropriations bills. The subjects of these bills are determined by and coincide with the subcommittee jurisdictional structure of the Committee on Appropriations. Typically the 13 regular appropriations bills are identified as:

- Agriculture, Rural Development and related agencies
- Commerce, Justice, State, and Judiciary and related agencies
- Defense Department
- District of Columbia
- Energy and Water Development
- Foreign Operations, Export Financing, and related programs
- Interior Department and related agencies
- Labor-HHS-Education Departments and related agencies
- Legislative Branch
- Military Construction
- Transportation Department and related agencies
- Treasury, Postal Service, and general government
- Veterans' Affairs, Housing and Urban Development, Independent Agencies

The question as to just what constitutes a general appropriations bill is important because the rule against inclusion of substantive legislation in appropriation measures (see § 27, infra) applies only to ''general'' appropria-

tion bills. Deschler Ch 26 § 1.1; *Manual* § 835. And the requirement that unauthorized appropriations or ''legislative'' provisions not be in order in an appropriation bill applies only to ''general'' appropriation bills. Deschler Ch 25 § 2. In the House, the 13 regular appropriation bills and measures providing supplemental appropriations to two or more agencies are general appropriations bills. Deschler Ch 25 § 6; Deschler Ch 26 § 1.3.

Measures which have been held *not* to constitute a general appropriation bill include:

- A joint resolution continuing appropriations for government agencies pending enactment of the regular appropriation bills. Deschler Ch 26 § 1.2.
- A joint resolution making supplemental appropriations for one agency. Deschler Ch 25 § 7.4.
- A joint resolution making an appropriation to a department for a specific purpose. 92–1, Aug. 4, 1971, p 29384.
- Bills providing special appropriations for specific purposes. 8 Cannon § 2285.
- A joint resolution providing an appropriation for a single government agency and permitting transfer of a portion of those funds to another agency. 96–1, Oct. 25, 1979, pp 29627, 29628.
- A joint resolution reported from the Committee on Appropriations transferring appropriated funds from one agency to another. 96–2, Mar. 26, 1980, pp 6716, 6717.
- A joint resolution transferring unobligated balances to the President to be available for specified purposes but containing no new budget authority. 100–2, Mar. 3, 1988, pp 3235–39.
- A bill making supplemental appropriation for emergency construction of public works. 7 Cannon § 1122.

§ 7. The Restrictions of Rule XXI Clause 2

Generally

Rule XXI clause 2 contains two restrictions relative to appropriations bills: it (1) prohibits the inclusion in general appropriation bills of ''unauthorized'' appropriations, except for works-in-progress, and (2) prohibits provisions ''changing existing law''—usually referred to as ''legislation on an appropriation bill''—except for provisions that retrench expenditures under certain conditions, and except for rescissions of amounts provided in appropriation acts reported by the Appropriations Committee. *Manual* § 834. The ''retrenchment'' provision is known as the Holman rule, and is discussed in § 46, infra.

In practice, the concepts ''unauthorized appropriations'' and ''legislation on general appropriation bills'' sometimes have been applied almost interchangeably as grounds for making points of order pursuant to Rule XXI

clause 2. This occurs because an appropriation made without prior authorization has, in a sense, the effect of legislation, particularly in view of rulings of long standing (§ 28, infra) that a ''proposition changing existing law'' may be construed to include the enactment of a law where none exists. Deschler Ch 26 § 1. The two concepts are treated separately in this article, however, because they derive from different paragraphs of clause 2, Rule XXI and constitute distinct restrictions on the authority of the Committee on Appropriations.

Enforcement of Rule

As all bills making or authorizing appropriations require consideration in Committee of the Whole, it follows that the enforcement of the rule must ordinarily occur during consideration in Committee of the Whole, where the Chair, on the raising of a point of order, may rule out any portion of the bill in conflict with the rule. 4 Hinds § 3811; *Manual* § 835. Because portions of the bill thus stricken are not reported back to the House, clause 8, Rule XXI was added in the 104th Congress to empower the Committee of the Whole to strike offending provisions without Members needing to reserve points of order in the House. The enforcement of the rule also occurs in the House, since a motion to recommit a general appropriation bill may not propose an amendment in violation of the rule. Deschler Ch 26 § 1.4; 101–1, Aug. 1, 1989, p 17159; 101–1, Aug. 3, 1989, p 18546. It should be stressed, however, that the House may, through various procedural devices, waive one or both requirements of the rule, and thereby preclude the raising of such points of order against provisions in the bill. § 68, infra.

§ 8. Committee Jurisdiction and Functions

Generally

Today, under Rule X clause 1 the House Committee on Appropriations has jurisdiction over all appropriations, including general appropriation bills. *Manual* § 671b. And special Presidential messages on rescissions and deferrals of budget authority submitted pursuant to § 1012 and § 1013 of the Impoundment Control Act of 1974, as well as rescission bills as defined in § 1011, are referred to the Committee on Appropriations if the proposed rescissions or deferrals involve funds already appropriated or obligated. *Manual* § 671b. Impoundments generally, see BUDGET PROCESS.

Under the Congressional Budget Act of 1974, the committee was given jurisdiction over rescissions of appropriations, transfers of unexpended balances, and the amount of new spending authority to be effective for a fiscal year. See Rule X clause 1(b). *Manual* § 671b.

Committee Reports

A report from the Appropriations Committee accompanying any general appropriation bill must contain a concise statement describing fully the effect of any provision of the accompanying bill which directly or indirectly changes the application of existing law. Rule XXI clause 3. *Manual* § 844b. Provisions in the bill which are described in the report as changing existing law are presumed to be legislation in violation of clause 2(c) of Rule XXI, absent rebuttal by the committee. 98–2, May 31, 1984, p 14591. The rules further require that such reports contain a list of appropriations in the bill for expenditures not previously authorized by law. Rule XXI clause 3, as amended in 1995.

§ 9. Duration of Appropriation

Annual Appropriations

The most common form of appropriation provides budget authority for a single fiscal year. All of the 13 regular appropriations bills, for example, are annual, although certain accounts may ''remain available until expended.'' Where a bill provides budget authority for a single fiscal year, the funds have to be obligated during the fiscal year for which they are provided; they lapse if not obligated by the end of that year. Indeed, unless an act provides that a particular fund shall be available beyond the fiscal year, appropriations are made for one year only and any unused funds automatically go back into the Treasury at the end of the current fiscal year. *Norcross* v *U.S.*, 1958, 142 Ct.Cl. 763.

An appropriation in a regular appropriation law may be construed to be permanent or available continuously only if the appropriation expressly provides that it is available after the fiscal year covered by the law in which it appears, or unless the appropriation is for certain purposes such as public buildings. 31 USC § 1301.

The fiscal year for the federal government begins on October 1 and ends on September 30. The fiscal year is designated by the calendar year in which it ends.

Multi-year Appropriations

A multi-year appropriation is made when budget authority is provided in an appropriations act that is available for a specified period of time in excess of one fiscal year.

Permanent Appropriations

A permanent appropriation is budget authority that becomes available as the result of previously-enacted legislation and which does not require current action by Congress. Examples include the appropriations for compensation of Members of Congress (Pub. L. No. 97–51, § 130(c)), and the various trust funds for which the obligational authority is already provided in basic law. *Appropriations, Budget Estimates, Etc.,* S. Doc. No. 100–23, pp 2329, 2366.

B. Authorization of Appropriation

§ 10. In General; Necessity of Authorization

Generally

The current House rule prohibits the inclusion in general appropriation bills of ''unauthorized'' appropriations, except for ''public works and objects'' already under way. Rule XXI clause 2(a). *Manual* § 834. Thus, any Member may make a point of order on the House floor to prevent consideration of an unauthorized appropriation (§ 67, infra), although the House frequently waives the enforcement of the rule (§ 68, infra).

Authorization to Precede Appropriation

The enactment of authorizing legislation must occur prior to, and not following, the consideration of an appropriation for the proposed purpose. Thus, delaying the availability of an appropriation pending enactment of an authorization will not protect that appropriation against a point of order. Deschler Ch 26 § 7.3. A bill may not permit a portion of a lump sum—unauthorized at the time the bill is being considered—to subsequently become available; a further appropriation upon the enactment of authorizing legislation would be needed. Deschler Ch 25 § 2. Likewise an appropriation will not be permitted which is conditioned on a future authorization. Deschler Ch 26 §§ 7.2, 47.4. But where lump sums are involved, language which limits use of an appropriation to programs ''authorized by law'' or which permits expenditures ''within the limits of the amount now or hereafter authorized to be appropriated,'' has been held to insulate the bill against the point of order. Deschler Ch 26 § 7.10 (note).

The requirement that the authorization precede the appropriation is satisfied if the authorizing legislation has been enacted into law between the time the appropriation bill is reported and the time it is considered in the Committee of the Whole. Deschler Ch 25 § 2.21.

It should be emphasized that the rule applies to ''general'' appropriation bills. A joint resolution containing continuing appropriations is not considered a general appropriation bill within the purview of the rule, despite inclusion of diverse appropriations which are not ''continuing'' in nature. Deschler Ch 25 § 2.

§ 11. Duration of Authorization

Generally; Renewals

Until recent years, many authorizations were permanent, being provided for by the organic statute that created the agency or program. Such statutes often include provisions to the effect that there are hereby authorized to be appropriated ''hereafter'' such sums ''as may be necessary'' or ''as approved by Congress,'' to implement the law, thereby requiring the appropriate budget authority to be enacted each year in accordance with this permanent authorization. See, for example, Deschler Ch 26 § 11.1.

Today, the House more commonly authorizes appropriations for only a certain number of years at a time. Authorizations may extend for two, five, or 10 years, and they may be renewed periodically. The trend toward periodic authorizations is reflected in the House rule adopted in 1970 which requires that each standing committee insure that appropriations for continuing programs and activities will be made annually ''to the maximum extent feasible,'' consistently with the nature of the programs involved. And programs for which appropriations are not made annually may have ''sunset'' provisions which require that they be reviewed periodically to determine whether they can be modified to permit annual appropriations. Rule X clause 4(f). *Manual* § 699a.

§ 12. Sufficiency of Authorization

Generally

The term ''authorized by law'' in Rule XXI clause 2 (*Manual* § 834) is ordinarily construed to mean a ''law enacted by the Congress;'' statutory authority for the appropriation must exist. Deschler Ch 25 § 2.3. It has been held, for example, that a bill passed by both Houses but not signed by the President nor returned to the originating House is insufficient authorization to support an appropriation. 92–1, May 11, 1971, p 14471. Similarly, an executive order does not constitute sufficient authorization in the absence of proof of its derivation from a statute enacted by Congress. Deschler Ch 26 § 7.7. On the other hand, sufficient ''authorization'' for an appropriation may be found to exist in a treaty (Deschler Ch 26 § 17.9) that has been rati-

fied by both parties (4 Hinds § 3587), or in legislation contained in a previous appropriation act which has become permanent law (Deschler Ch 25 § 2.5).

Authorization From Specific Statutes or General Existing Law

Authorization for a program may be derived from a specific law providing authority for that particular program or from a more general existing law—''organic law''—authorizing appropriations for such programs. Thus, a paragraph in a general appropriation bill purportedly containing funds not yet specifically authorized by separate legislation was held not to violate Rule XXI clause 2, where it was shown that all of the funds in the paragraph were authorized by more general provisions of law currently applicable to the programs in question. 95–2, June 8, 1978, p 16778.

Similarly, a permanent law authorizing the President to appoint certain staff, together with legislative provisions authorizing additional employment contained in an appropriation bill enacted for that fiscal year, constituted sufficient authorization for a lump-sum supplemental appropriation for the White House for the same fiscal year. Deschler Ch 25 § 2.6. The legislative history of the law in question may be considered to determine whether sufficient authorization for the project exists. Deschler Ch 25 § 2.7. The omission to appropriate during a series of years for a program previously authorized by law does not repeal the law, and it may be cited as providing authorization for a subsequent appropriation. 4 Hinds § 3595.

Some statutes expressly provide, however, that there may be appropriated to carry out the functions of certain agencies only such sums as Congress may thereafter authorize by law, thus requiring specific subsequently enacted authorizations for the operations of such agencies and not permitting appropriations to be authorized by the ''organic statute'' creating the agency. (See, for example, 15 USC § 1024(e), establishing the Joint Economic Committee and authorizing the appropriation of ''such sums as may be necessary during each fiscal year.'' See Deschler Ch 26 § 49.2 (note)).

Effect of Prior Unauthorized Appropriations

An appropriation for an object unauthorized by law, however frequently made in former years, does not warrant similar appropriations in succeeding years (7 Cannon § 1150), unless the program in question is such as to fall into the category of a continuation of work-in-progress (§ 25, infra), or unless authorizing legislation in a previous appropriation act has become permanent law. *Manual* § 836.

Incidental Expenses; Implied Authorizations

A general grant of authority to an agency or program may be found sufficiently broad to authorize items or projects that are incidental to carrying out the purposes of the basic law. Deschler Ch 25 § 2.10. An amendment proposing appropriations for incidental expenses which contribute to the main purpose of carrying out the functions of the department for which funds are being provided in the bill is generally held to be authorized by law. Deschler Ch 26 § 7.15. For example, appropriations for certain travel expenses for the Secretary of the Department of Agriculture were held authorized by law as necessary to carry out the basic law setting up that Department. Deschler Ch 25 § 2.10.

On the other hand, where the authorizing law authorizes a lump-sum appropriation and confers broad discretion on an executive in allotting funds, an appropriation for a specific purpose may be ruled out as inconsistent therewith. Deschler Ch 26 § 15.5 (note). The appropriation of a lump sum for a general purpose having been authorized, a specific appropriation for a particular item included in such general purpose may be a limitation on the discretion of the executive charged with allotment of the lump sum and not in order on the appropriation bill. 7 Cannon § 1452. Such a limitation may also be ruled out on the ground that it is ''legislation'' on an appropriation bill. § 43, infra. An appropriation to pay a judgment awarded by a court is in order if such judgment has been properly certified to Congress. Deschler Ch 25 § 2.2.

§ 13. Proof of Authorization; Burden of Proof

Burden of Proof Generally

Under House practice, those upholding an item of appropriation have the burden of showing the law authorizing it. 4 Hinds § 3597; 7 Cannon §§ 1179, 1276. Thus, a point of order having been raised, the burden of proving the authorization for language carried in an appropriation bill falls on the proponents and managers of the bill (Deschler Ch 26 § 9.4), who must shoulder this burden of proof by citing statutory authority for the appropriation. Deschler Ch 25 § 9.5. The Chair may overrule a point of order upon citation to an organic statute creating an agency, absent any showing that such law has been amended or repealed to require specific annual authorizations. Deschler Ch 26 § 9.6.

Burden of Proof as to Amendment

The burden of proof to show that an appropriation contained in an amendment is authorized by law is on the proponent of the amendment, a

point of order having been raised against the appropriation. Deschler Ch 26 §§ 9.1, 9.2; 102–1, Oct. 29, 1991, p ____. If the amendment is susceptible to more than one interpretation, it is incumbent upon the proponent to show that it is not in violation of the rule. *Manual* § 835.

Evidence of Compliance With Condition

An authorizing statute may provide that the authorization for a program is to be effective only upon compliance by executive officials with certain conditions or requirements. In such a case, a letter written by an executive officer charged with the duty of furthering a certain program may be sufficient documentary evidence of authorization in the manner prescribed. Deschler Ch 26 §§ 10.2, 10.3.

§ 14. Increasing Budget Authority

Increases Within Authorized Limits

Authorizing legislation may place a ceiling on the amount of budget authority which can be appropriated for a program or may authorize the appropriation of ''such sums as are necessary.'' Absent restrictions imposed by the budget process, it is in order to increase the appropriation in an appropriation bill for a purpose authorized by law if such increase does not exceed the amount authorized for that purpose. Deschler Ch 25 §§ 2.13, 2.15. An amendment proposing simply to increase an appropriation for a specific purpose over the amount carried in the appropriation bill does not constitute a change in law unless such increase is in excess of that authorized. Deschler Ch 25 § 2.14. An amendment changing the figure in the bill to the full amount authorized is in order. Deschler Ch 25 § 2.16. Of course, if the authorization does not place a cap on the amount to be appropriated, an amendment increasing the amount of the appropriation for items included in the bill is in order. Deschler Ch 25 § 11.16.

Increases in Excess of Amount Authorized

An appropriation in excess of the specific amount authorized by law may be in violation of the rule prohibiting unauthorized appropriations (Rule XXI clause 2). Deschler Ch 26 § 21. Thus, where existing law limited annual authorizations of appropriations for incidental expenses of a program to $7,500, an appropriation for $10,000 was held to be unauthorized and was ruled out on a point of order. 94–1, Sept. 30, 1974, p 30981.

The rule that an appropriation bill may not provide budget authority in excess of the amount specified in the authorizing legislation has also been applied to:

- An amendment proposing an increase in the amount of an appropriation authorized by law for compensation of Members of the House. Deschler Ch 26 § 21.2.
- A provision in an appropriation bill increasing the loan authorization for the rural telephone program above the amount authorized for that purpose. Deschler Ch 26 § 33.3.
- Language in an appropriation bill providing funds for the Joint Committee on Defense Production in excess of the amount authorized by law. 88–2, Apr. 10, 1964, p 7640.
- A paragraph in a general appropriation bill containing funds in excess of amounts permitted to be committed by a federal agency for mortgage purchases. 97–2, July 29, 1982, p 18636.

Waiver of Ceiling

Where a limitation on the amount of an appropriation to be annually available for expenditure by an agency has become law, language in an appropriation bill seeking to waive or change this limitation gives rise to a point of order that the language is legislation on an appropriation bill. Deschler Ch 26 § 33.2.

C. Authorization for Particular Purposes or Programs

§ 15. In General

Absent an appropriate waiver, language in a general appropriation bill providing funding for a program that is not authorized by law is in violation of Rule XXI clause 2(a) and may also ''change existing law'' in violation of clauses 2(b) or 2(c). See 98–2, May 31, 1984, p 14590. Provisions that have been ruled out as unauthorized under Rule XXI clause 2 have included:

- Appropriations for fiscal 1979 for the Department of Justice and its related agencies. Deschler Ch 26 § 18.3.
- An appropriation for expenses incident to the special instruction and training of United States attorneys and United States marshals, their assistants and deputies, and United States commissioners. Deschler Ch 26 § 18.1.
- Paragraphs containing funds for a fiscal year for Coast Guard acquisitions, construction, research, development, and evaluation. 95–1, June 8, 1977, pp 17945, 17946.
- An appropriation for the U.S. Customs Service air interdiction program. 98–2, June 21, 1984, pp 17693, 17694.

- An appropriation for liquidation of contract authority to pay costs of certain subsidies granted by the Maritime Administration. 92–1, June 24, 1971, p 21901.
- Language permitting the Secretary of Labor and the Secretary of Health, Education, and Welfare to use funds for official reception and representation expenses. Deschler Ch 26 § 20.19.
- Language making funds available for distribution of radiological instruments and detection devices to states by loan or grant for civil defense purposes. Deschler Ch 26 § 20.1.
- Language making funds available for reimbursements of Government employees for use by them of their privately owned automobiles on official business. Deschler Ch 26 § 20.6.
- An appropriation for the American Revolution Bicentennial Commission. 91–2, May 19, 1970, p 16165.

The rulings cited in this division are intended to illustrate the application of the rule requiring appropriations to be based on prior authorization. No attempt has been made to indicate whether measures similar to those ruled upon, if offered today, would in fact be authorized under present laws.

§ 16. Agricultural Programs

Held Authorized by Existing Law

- An appropriation to be used to increase domestic consumption of farm commodities. Deschler Ch 26 § 11.1.
- Appropriations for cooperative range improvements (including construction, maintenance, control of rodents, and eradication of noxious plants in national forests). Deschler Ch 26 § 11.3.
- An appropriation to enable the Secretary of Agriculture to carry out the provisions of the National School Lunch Act of 1946. Deschler Ch 26 § 11.5.
- Appropriations for the acquisition and diffusion of information by the Agriculture Department. 4 Hinds § 3649; Deschler Ch 26 § 11.10.
- Appropriations for agricultural engineering research and for programs relating to the prevention and control of dust explosions and fires during the harvesting and storing of agricultural products. Deschler Ch 26 § 11.11.
- An appropriation for the purchase and installation of weather instruments and the construction or repair of buildings of the Weather Bureau. Deschler Ch 26 § 11.16.

Ruled Out as Unauthorized

- Language providing funds for a celebration of the centennial of the establishment of the Department of Agriculture. Deschler Ch 26 § 11.2.
- The organization of a new bureau to conduct investigations relating to agriculture. 4 Hinds § 3651.
- Language providing for cooperation by and with state agriculture investigators. 4 Hinds § 3650; 7 Cannon §§ 1301, 1302.

- A section providing funds to collect, compile, and analyze data relating to consumer expenditures and savings. Deschler Ch 26 § 11.7.
- An appropriation to permit the Department of Agriculture to investigate and develop methods for the manufacture and utilization of starches from cull potatoes and surplus crops. Deschler Ch 26 § 11.9.
- A provision for the refund of certain penalties to wheat producers. Deschler Ch 26 § 11.6.
- An amendment appropriating funds for the immediate acquisition of domestic meat and poultry to be distributed consistently with provisions of law relating to distribution of other foods. 93–2, June 21, 1974, p 20620.
- An appropriation for the control of certain crop diseases or infestations. Deschler Ch 26 §§ 11.12, 11.13.

§ 17. Programs Relating to Business or Commerce

Held Authorized by Existing Law

- An appropriation for the Director of the Bureau of the Census to publish monthly reports on coffee stocks on hand in the United States. Deschler Ch 26 § 12.1.
- An appropriation for the office of the Secretary of Commerce for expenses of attendance at meetings of organizations concerned with the work of his office. Deschler Ch 26 § 12.6.

Ruled Out as Unauthorized

- An appropriation for sample surveys by the Census Bureau to estimate the size and characteristics of the nation's labor force and population. Deschler Ch 26 § 12.2.
- Language providing appropriations for necessary expenses in the performance of activities and services relating to technological development as an aid to business in the development of foreign and domestic commerce. Deschler Ch 26 § 12.4.
- Language appropriating funds for travel in privately owned automobiles by employees engaged in the maintenance and operation of remotely controlled air-navigation facilities. Deschler Ch 26 § 12.5.
- Funds for necessary expenses of the National Bureau of Standards (including amounts for the standard reference data program) for fiscal 1979. Deschler Ch 26 § 12.9.

§ 18. Defense Programs

Held Authorized by Existing Law

- Funds for paving of streets and erection of warehouses incident to the establishment of a naval station. 7 Cannon § 1232.
- Appropriations to enable the President, through such departments or agencies of the government as he might designate, to carry out the provisions of the Act of Mar. 11, 1941, to promote the defense of the United States. Deschler Ch 26 § 13.3.

Ruled Out as Unauthorized

- Funds for transportation of successful candidates to the Naval Academy. 7 Cannon § 1234.
- Funds for establishment of shooting ranges and purchase of prizes and trophies. 7 Cannon § 1242.
- An appropriation for the construction and improvement of barracks for enlisted men and quarters for noncommissioned officers of the Army. Deschler Ch 26 § 13.5.
- An amendment striking out funds for a nuclear aircraft carrier program and inserting funds for a conventional-powered aircraft carrier program. Deschler Ch 26 § 13.6.
- A provision increasing the funds appropriated for a fiscal year for military assistance to South Vietnam and Laos. 93–2, Apr. 10, 1974, p 10594.
- Language including funds for Veterans' Administration expenses for the issuance of memorial certificates to families of deceased veterans. Deschler Ch 26 § 13.1.

§ 19. Funding for the District of Columbia

Held Authorized Under Existing Law

- An appropriation for opening, widening, or extending streets and highways in the District of Columbia. 7 Cannon § 1189.
- An appropriation for street lights or for improving streets out of a special fund created by the District of Columbia Gasoline Tax Act. Deschler Ch 26 §§ 11.15, 14.7.
- An appropriation for expenses of keeping school playgrounds open during the summer months. Deschler Ch 26 § 14.5.
- An appropriation for the preparation of plans and specifications for a branch library building in the District of Columbia. Deschler Ch 26 § 14.13.

Ruled Out as Unauthorized

- Appropriations for certain federal office buildings in the District of Columbia that were not approved by the Public Works Committees of the House and Senate as required by the Public Buildings Act of 1959. 86–2, Apr. 19, 1960, p 8230.
- A paragraph permitting the use of funds by the Office of the Corporation Counsel to retain professional experts at rates fixed by the commissioner. Deschler Ch 26 § 14.1.
- An appropriation for the preparation of plans and specifications for a new main library building in the District of Columbia. Deschler Ch 26 § 14.12.
- An appropriation for the salary and expenses of the office of Director of Vehicles and Traffic out of the District Gasoline Tax Fund. Deschler Ch 26 § 14.14.
- Language permitting the Commissioners of the District of Columbia to purchase a municipal asphalt plant. Deschler Ch 26 § 14.19.
- An amendment making funds available for expenditure by the American Legion in connection with its national convention. Deschler Ch 26 § 14.3.
- An appropriation to reimburse certain District of Columbia officials for services and expenses. 7 Cannon § 1184.

§ 20. Interior or Environmental Programs

Held Authorized Under Existing Law

- An appropriation for suppression of liquor or peyote traffic among Indians. 7 Cannon §§ 1210, 1212.
- An appropriation for the examination of mineral resources of the national domain. 7 Cannon § 1222.
- An appropriation for the development of an educational program of the National Park Service. Deschler Ch 26 § 15.17.
- Language providing an appropriation for the purpose of encouraging industry and self-support among Indians and outlining areas of discretionary authority to be exercised by the Secretary of the Interior. Deschler Ch 26 § 15.26.
- Appropriations for irrigation projects which had been recommended by the Secretary of the Interior and approved by the President. Deschler Ch 26 § 15.30.

Ruled Out as Unauthorized

- A paragraph containing funds to enable the EPA to obtain reports as to the probable adverse effect on the economy of certain federal environmental actions. Deschler Ch 26 § 15.1.
- A paragraph making funds available to the EPA to establish an independent review board to review the priorities of the agency. Deschler Ch 26 § 15.2.

- Language authorizing the Secretary of the Interior, in administering the Bureau of Reclamation, to contract for medical services for employees and to make certain payroll deductions. Deschler Ch 26 § 15.9.
- An appropriation for the Division of Investigations in the Department of the Interior, to be expended under the direction of the Secretary, to meet unforeseen emergencies of a confidential character. Deschler Ch 26 § 15.12.
- Language appropriating funds ''out of the general funds of the Treasury'' (and not the reclamation fund) for investigations of proposed federal reclamation projects. Deschler Ch 26 § 15.28.
- Language requiring that part of an appropriation for general wildlife conservation be earmarked expressly for the leasing and management of land for the protection of the Florida Key deer. Deschler Ch 26 § 15.5.
- Appropriations for the National Power Policy Committee to be used by the committee in the performance of functions prescribed by the President. Deschler Ch 26 § 15.7.

§ 21. Programs Relating to Foreign Affairs

Held Authorized by Existing Law

- An appropriation for transportation and subsistence of diplomatic and consular officers en route to and from their posts. 7 Cannon § 1251.
- A provision earmarking an amount for a contribution to the International Secretariat on Middle Level Manpower. Deschler Ch 26 § 17.2.
- An appropriation for the obligation assumed by the United States in accepting membership in the International Labor Organization. Deschler Ch 26 § 17.3.
- An amendment providing funds for a health exhibit at the Universal and International Exhibition of Brussels. Deschler Ch 26 § 17.6.
- An appropriation for commercial attachés to be appointed by the Secretary of Commerce. 7 Cannon § 1257.
- An appropriation to compensate the owners of certain vessels seized by Ecuador. Deschler Ch 26 § 17.1.

Ruled Out as Unauthorized

- An amendment to earmark part of the appropriation for the USIA to provide facilities for the translation and publication of books and other printed matter in various foreign languages. Deschler Ch 26 § 17.7.
- Appropriations for incidental and contingent expenses in the consular and diplomatic service. 4 Hinds § 3609.
- An appropriation for the Foreign Service Auxiliary. Deschler Ch 26 § 17.14.

- An appropriation for the salary of a particular U.S. minister to a foreign country where the Senate had not confirmed the appointee. Deschler Ch 26 § 17.17.
- An amendment providing funds for acquisition of sites and buildings for embassies in foreign countries. 4 Hinds § 3606.

§ 22. Legislative Branch Funding

It is not in order to provide in an appropriation bill for payments to employees of the House unless the House by prior action has authorized such payments. 4 Hinds § 3654. Such authorization is generally provided for by resolution from the Committee on House Oversight (formerly House Administration). The House in appropriating for an employee may not go beyond the terms of the resolution creating the office. 4 Hinds § 3659.

A resolution of the House has been held sufficient authorization for an appropriation for the salary of an employee of the House (4 Hinds §§ 3656–3658) even though on one occasion the resolution may have been agreed to only by a preceding House (4 Hinds § 3660). A resolution intended to justify appropriations beyond the term of a Congress is ''made permanent law'' by a legislative provision in a Legislative Branch Appropriation Act.

Held Authorized

- Funds for employment of counsel to represent Members and to appear in court officially. 7 Cannon § 1311.
- Funds for expenses incurred in contested election cases when properly certified. 7 Cannon § 1231.
- Salaries for certain House employees. 91–1, Aug. 5, 1969, p 22197.
- An increase in the salary of an officer of the House. 89–2, Sept. 8, 1966, p 22020.
- The salary of the Chief of Staff of the Joint Committee on Internal Revenue Taxation. 92–2, Oct. 4, 1972, p 33744.
- Salary adjustments for certain House employees. 92–2, Jan. 27, 1972, p 1531.
- Overtime compensation for employees of the Publications Distribution Service (Folding Room). 92–2, Mar. 2, 1972, p 6627.
- Costs of stenographic services and transcripts in connection with a meeting or hearing of a committee. *Manual* § 703c. H. Res. 988, 93d Cong.
- Certain costs associated with the organizational meeting of the Democratic Caucus or Republican Conference. *Manual* § 997. 2 USC § 29a.
- The transfer of surplus prior-year funds to liquidate certain current obligations of the House. Deschler Ch 25 § 5.3.

Ruled Out as Unauthorized

- An amendment proposing to increase the total amount for salaries of Members beyond that authorized. Deschler Ch 26 § 21.2.
- Language providing an allowance payable to the attending physician of the Capitol. 86–2, May 17, 1960, p 10447.
- An amendment providing funds for a parking lot for the use of Members and employees of Congress. Deschler Ch 26 § 20.3.
- An appropriation for employment by the Committee on Appropriations of 50 qualified persons to investigate and report on the progress of certain contracts let by the United States. Deschler Ch 26 § 20.2.

§ 23. Salaries and Related Benefits

Language in a general appropriation bill providing funding for salaries that are not authorized by law is in violation of Rule XXI clause 2(a). 98–2, May 31, 1984, p 14589. Such propositions, whether to appropriate for salaries not established by law or to increase salaries fixed by law, are out of order. 4 Hinds §§ 3664–3667, 3676–3679. The mere appropriation for a salary for one year does not create an office so as to justify appropriations in succeeding years. 4 Hinds §§ 3590, 3697. However, it has been held that a point of order does not lie against a lump-sum appropriation for increased pay costs as being unauthorized where language in the bill limits use of the appropriation to pay costs ''authorized by or pursuant to law.'' Deschler Ch 25 § 2.20.

Ruled Out as Unauthorized

- Language providing for positions of employment in certain grades, in addition to the number authorized in existing law. 86–1, May 11, 1959, p 7904.
- Language providing funds for the hire of one other person in excess of the number authorized by law. 87–2, Apr. 2, 1962, p 5932.
- A paragraph containing funds for personal services for the President ''without regard to provisions of law'' regulating government employment and for entertainment expenses to be accounted for solely on the certificate of the President. 93–1, Aug. 1, 1973, pp 27286, 27287.
- A paragraph permitting the use of funds by the D.C. Office of the Corporation Counsel to retain professional experts at rates fixed by the commissioner. 93–1, June 18, 1973, p 20068.
- A paragraph authorizing an executive official to establish salary levels of certain other officials. 97–2, Sept. 30, 1982, pp 26290, 26291.
- A provision appropriating necessary expenses for a designated number of officers on the active list of an agency. 98–2, May 31, 1984, p 14590.
- An appropriation for salaries and expenses of the Commission on Civil Rights above the amount authorized by existing law for that purpose. 92–1, June 24, 1971, p 21902.

- An amendment appropriating funds for salaries and expenses of additional inspectors in the U.S. Customs Service. 98–2, Aug. 1, 1984, pp 21904, 21905.
- An amendment providing for a salary of $10,000 per year for the wife of the President for maintaining the White House. Deschler Ch 26 § 20.13.

D. Authorization for Public Works

§ 24. In General

Language in a general appropriation bill providing funding for a public work that is not authorized by law is in violation of Rule XXI clause 2(a) (Deschler Ch 26 § 19.13), unless the project can be deemed ''work in progress'' within the meaning of that rule (§ 25, infra). An appropriation for a public work in excess of the amount fixed by law (4 Hinds §§ 3583, 3584; 7 Cannon § 1133), or for extending a public service beyond the limits assigned by an executive officer exercising a lawful discretion (4 Hinds § 3598), is out of order.

Held Authorized by Existing Law

- An appropriation for necessary advisory services to public and private agencies with regard to construction and operation of airports and landing areas. Deschler Ch 26 § 19.4.
- An amendment proposing to increase a lump-sum appropriation for river and harbor projects. Deschler Ch 26 § 19.6.
- An appropriation for the Tennessee-Tombigbee inland waterway. Deschler Ch 26 § 19.9.
- An appropriation for construction of transmission lines from Grand Coulee Dam to Spokane. Deschler Ch 25 § 19.11.

Ruled Out as Unauthorized

- Language providing an additional amount for construction of certain public buildings. Deschler Ch 26 § 19.1.
- Appropriations for certain federal office buildings in the District of Columbia where not approved by the Public Works Committees of the House and Senate as required by the Public Buildings Act of 1959. Deschler Ch 26 § 19.2.
- An appropriation for construction of a connecting highway between the United States and Alaska. Deschler Ch 26 § 19.5.
- An amendment making part of an appropriation to the Army Corps of Engineers for flood control available for studying specified work of the Bureau of Reclamation. Deschler Ch 26 § 19.8.
- Language appropriating certain trust funds for expenses relating to forest roads and trails. Deschler Ch 26 § 28.2.

§ 25. Works in Progress

The House rule which bars appropriations not previously authorized by law provides for an exception for appropriations for ''public works and objects'' which are already in progress. Rule XXI clause 2(a). *Manual* § 834. Thus, when the construction of a public building has commenced and there is no limit of cost, further appropriations may be made under the exception for works in progress. Deschler Ch 26 § 8.1. The exception for works in progress under Rule XXI may apply even though the original appropriation for the project was unauthorized. 7 Cannon § 1340; Deschler Ch 26 § 8.2.

Historically, the ''works in progress'' exception has been applied only to projects funded from the general fund of the Treasury for which no authorization has been enacted; it does not apply to language changing existing law by extending the authorized availability of funds or in contravention of law restricting use of a special fund. 103–1, Sept. 22, 1993, p ____. An appropriation for construction which is in violation of existing law or which exceeds the limit fixed by law is not permitted under the work-in-progress exception of Rule XXI. 4 Hinds §§ 3587, 3702; 7 Cannon § 1332; *Manual* § 839.

The tendency of later decisions is to narrow the application of the exception under Rule XXI clause 2(a) making in order appropriations for ''works in progress.'' 7 Cannon § 1333. The work in question, to qualify under the rule, must have moved beyond the planning stage. 7 Cannon § 1336. To come within the terms of the rule, it must be actually ''in progress,'' according to the usual significance of those words (4 Hinds § 3706), with actual work having been initiated (Deschler Ch 26 § 8.5); merely selecting or purchasing a site for the construction of a building is not sufficient (4 Hinds §§ 3762, 3785). But the fact that the work has been interrupted—even for several years—does not prevent it from qualifying under the work-in-progress exception of clause 2(a). 4 Hinds §§ 3707, 3708.

To establish that actual work has begun on the project, the Chair may require some documentary evidence that work has been initiated. Deschler Ch 26 § 8.5. To this end, the Chair may consider a letter from an executive officer charged with the duty of constructing the project. Deschler Ch 26 § 8.2. News articles merely suggesting that work may have begun have been regarded as insufficient evidence that work is in progress within the meaning of the rule. Deschler Ch 26 § 8.7.

§ 26. — What Constitutes a Work in Progress

The ''works and objects'' referred to in the exception to the rule prohibiting unauthorized appropriations is construed to mean something tan-

gible, such as a building or road; the term does not contemplate work that is indefinite or intangible, such as an investigation. 4 Hinds §§ 3714, 3715, 3719. See also Deschler Ch 26 § 8. The term does not extend to projects that are indefinite as to completion and intangible in nature, such as the gauging of streams. 4 Hinds §§ 3714, 3715. Nor does the term extend to the ordinary duties of an executive or administrative office. 4 Hinds §§ 3709, 3713.

Appropriations for extension or repair of an existing road (4 Hinds §§ 3793, 3798), bridge (4 Hinds § 3803), or public building have been admitted as in continuation of a work (4 Hinds §§ 3777, 3778), although it is not in order as such to provide for a new building in place of one destroyed (4 Hinds § 3606). The purchase of adjoining land for a work already established has been admitted under this principle (4 Hinds §§ 3766–3773), as well as additions to or extensions of existing public buildings (4 Hinds §§ 3774, 3775). But the purchase of a separate and detached lot of land is not admitted (4 Hinds § 3776).

Appropriations for new buildings as additional structures at Government institutions have sometimes been admitted (4 Hinds §§ 3741–3750), but propositions to appropriate for new buildings that were not necessary adjuncts to the institution have been ruled out (4 Hinds §§ 3755–3759).

Projects that have qualified as a ''work or object . . . in progress'' under Rule XXI clause 2(a) have included:

- A topographical survey. 7 Cannon § 1382.
- The continuation of construction at the Kennedy Library, a project owned by the United States and funded by a prior year's appropriation. 100–2, June 14, 1988, p 14335.
- A continuation of aircraft experimentation and development. Jan. 22, 1926, p 2623.

Projects that have been ruled out as a ''work or object . . . in progress'' under Rule XXI clause 2(a) have included:

- New Army hospitals. 4 Hinds § 3740.
- A new lighthouse. 4 Hinds § 3728.
- An extension of an existing road. 103–1, Sept. 22, 1993, p ____.

III. Legislation in General Appropriation Bills; Provisions Changing Existing Law

A. Generally

§ 27. The Restrictions of Rule XXI Clause 2

In General; Historical Background

The House rules have contained language forbidding the inclusion in general appropriation bills of language ''changing existing law'' almost continuously since the 44th Congress. In 1835, when it became apparent that appropriation bills were being delayed because of the intrusion of legislative matters, John Quincy Adams suggested the desirability of a plan that such bills ''be stripped of everything but the appropriations.'' 4 Hinds § 3578.

Today, House Rule XXI provides that, with two exceptions, ''[n]o provision changing existing law shall be reported in any general appropriation bill . . .'' (clause 2(b)), and that ''[n]o amendment to a general appropriation bill shall be in order if changing existing law.'' Clause 2(c). The exceptions set forth in clause 2(b) are for germane provisions which change existing law in a way that would ''retrench'' expenditures (see § 46, infra), and for rescissions of previously enacted appropriations. *Manual* § 834.

Language changing existing law in violation of Rule XXI is often referred to as ''legislation on an appropriation bill.'' Deschler Ch 26 § 1. What ''legislation'' means in this context is a change in an existing law that governs how appropriations may be used.

Like the rule generally prohibiting unauthorized appropriations, the restriction against legislating on general appropriations bills is only enforced if a Member takes the initiative to enforce it by raising a point of order. § 67, infra. And such a point of order may be waived pursuant to various procedural devices. See § 68, infra.

The rule against legislation in appropriation bills is limited to general appropriation bills; thus, a joint resolution merely continuing appropriations for government agencies pending enactment of the regular appropriation bills is not subject to the clause 2 Rule XXI prohibitions against legislative language. 90–1, Sept. 21, 1967, p 26370.

Construction of Rule

The rule that forbids language in a general appropriation bill which changes existing law is strictly construed. Deschler Ch 26 § 64.23. The restriction is construed to apply not only to changes in an existing statute, but also to the enactment of law where none exists, to language repealing exist-

ing law (§ 28, infra), to a provision making changes in court interpretations of statutory law (96–2, Aug. 19, 1980, p 21978) and to a proposition to change a rule of the House (4 Hinds § 3819). The fact that legislative language may have been included in appropriation acts in prior years and made applicable to funds in those laws does not permit the inclusion in a general appropriation bill of similar language. 98–1, Sept. 22, 1983, pp 25403, 25406, 25407.

The Rule XXI restrictions as to changing existing law apply specifically to amendments to general appropriation bills. See clause 2(a). *Manual* § 834. It follows that if a motion to recommit with instructions constitutes legislation on an appropriation bill, the motion is subject to a point of order. Deschler Ch 26 § 1.4.

Burden of Proof

Where a point of order is raised against a provision in a general appropriation bill as constituting legislation in violation of Rule XXI clause 2, the burden of proof is on the Committee on Appropriations to show that the language is valid under the precedents and does not change existing law. Deschler Ch 26 § 22.30. Provisions in the bill, described in the accompanying report as directly or indirectly changing the application of existing law, are presumably legislation in violation of Rule XXI clause 2, in the absence of rebuttal by the committee. Deschler Ch 26 § 22.27. Similarly, the proponent of an amendment against which a point of order has been raised and documented as constituting legislation on an appropriation bill has the burden of proving that the amendment does not change existing law. Deschler Ch 26 § 22.29.

§ 28. Changing Existing Law by Amendment, Enactment, or Repeal; Waivers

The provision of the rule (Rule XXI clause 2) forbidding in any general appropriation bill a ''provision changing existing law'' is construed to mean:

- A change in the text of existing law. Deschler Ch 26 §§ 23.11, 24.6.

  Note: Existing law may be repeated verbatim in an appropriation bill (4 Hinds § 3414) but the slightest change of the text causes it to be ruled out (4 Hinds § 3817; 7 Cannon §§ 1391, 1394).
- The enactment of law where none exists.

  Note: The provision of the rule forbidding legislation in any general appropriation bill is construed to mean the enactment of law where none exists (4 Hinds §§ 3812, 3813), such as permitting funds to remain available until expended or beyond the fiscal year covered by the bill

(93–1, Aug. 1, 1973, pp 27288, 27289), or immediately upon enactment (100–2, June 28, 1988, p 16254), where existing law permits no such availability.

- The repeal of existing law. 7 Cannon § 1403; Deschler Ch 26 §§ 24.1, 24.7.
- A waiver of a provision of existing law. Deschler Ch 26 §§ 24.5, 34.14, 34.15.

Note: A waiver may be regarded as legislation on an appropriation bill where it uses such language as ''notwithstanding the provisions of any other law'' (Deschler Ch 26 § 26.6) or ''without regard to [sections of] the Revised Statutes'' (Deschler Ch 26 § 24.8).

§ 29. Imposing Contingencies and Conditions

Generally; Conditions Precedent

Provisions making an appropriation contingent on a future event are often presented in appropriation bills. Such contingencies may be phrased as conditions to be complied with, as in ''funds shall be available when the Secretary has reported,'' or as restrictions on funding, as in ''No funds until the Secretary has reported.'' Similar tests are applied in both formulations in determining whether the language constitutes legislation on an appropriation bill: Is the contingency germane or does it change existing law? Deschler Ch 26 § 49.2. Does it impose new duties (e.g. to report) where none exist under law? See § 31, infra.

Precedents in this discussion (§§ 29–31, infra) could in many instances be cited under the discussion on ''Limitations'' (§§ 50–59, infra). Language imposing a ''negative restriction'' is not a proper limitation and is indeed ''legislation,'' if it creates new law and requires positive determinations and actions where none exist in law. § 56, infra.

The proscription against changing existing law is applicable to those instances in which the whole appropriation is made contingent upon an event or circumstance as well as those in which the disbursement to a particular participant is conditioned on the occurrence of an event. Deschler Ch 26 §§ 47, 48. The terms ''unless,'' ''until,'' or ''provided,'' in an amendment or proviso are clues that the language may contain a condition that is subject

under Rule XXI clause 2(b) or (c) to a point of order. Language that has been ruled out pursuant to this rule has included:

- An amendment providing that funds shall not be available for any broadcast of information about the U.S. until the radio script for such broadcast has been approved by the Daughters of the American Revolution. Deschler Ch 26 § 47.1.
- An amendment to require, as a condition to the availability of funds, the imposition of standards of quality or performance. Deschler Ch 26 § 59.1.
- Language providing that none of the funds should be used unless certain procurement contracts were awarded on a formally advertised basis to the lowest responsible bidder. Deschler Ch 26 § 23.14.
- An amendment making the money available on certain contingencies which would change the lawful mode of payment. Deschler Ch 26 § 48.1.
- An amendment denying the obligation or expenditure of certain funds unless such funds were subject to audit by the Comptroller General. Deschler Ch 26 § 47.8. (A subsequent amendment which denied the use of funds not subject to audit ''as provided by law'' was offered and adopted.)
- Language making certain funds for an airport available for an access road (a federal project) provided Virginia makes available the balance of funds necessary for the construction of the road. Deschler Ch 26 § 48.7.
- Language providing that no part of the appropriation for certain range improvements shall be expended in any national forest until contributions at least equal to such expenditures are made available by local public or private sources. Deschler Ch 26 § 48.6.
- Language stating that no part of the funds shall be used ''unless and until'' approved by the Director of the Bureau of the Budget. Deschler Ch 26 § 48.3.
- A proviso that no funds shall be available for certain expenditures unless made in accordance with a budget approved by the Public Housing Commissioner. Deschler Ch 26 § 48.4.
- An amendment specifying that no funds made available may be expended until total governmental tax receipts exceed total expenditures. Deschler Ch 26 § 48.11.
- An amendment containing certification requirements and mandating certain contractual provisions as a condition to the receipt of funds. 100–2, May 18, 1988, p 11388.

§ 30. — Conditions Requiring Reports to, or Action by, Congress

Reporting to Congress as a Condition

It is legislation on a general appropriation bill in violation of clause 2, Rule XXI to require the submission of reports to a committee of Congress where existing law does not require that submission. 99–2, Aug. 1, 1986, p 18647. Thus, an amendment to a general appropriation bill precluding the

availability of funds therein unless agencies submit reports to the Committee on Appropriations—reports not required to be made by existing law—constitutes legislation in violation of that rule. 98–1, Nov. 2, 1983, p 30496; 99–1, July 25, 1985, pp 20806, 20807.

Congressional Action as Condition

Under the more recent precedents, it is not in order by way of amendment to make the availability of funds in a general appropriation bill contingent upon subsequent congressional action. *Manual* § 842b. Compare 90–2, June 11, 1968, p 16692; 96–1, Sept. 6, 1979, pp 23360, 23361. Such a condition changes existing law if its effect is to require a subsequent authorization which, when enacted, will automatically make funds available for expenditure without further appropriations. Such a result is contrary to the process contemplated in Rule XXI whereby appropriations are dependent on prior authorization. Deschler Ch 26 § 49.2 (note). Language making the availability of funds contingent upon the enactment of authorizing legislation raises a presumption that the appropriation is then unauthorized. 98–1, Sept. 19, 1983, pp 24640, 24641. Indeed, a conditional appropriation based on enactment of authorization is a concession on the face of the language that no prior authorization exists. Deschler Ch 26 § 47.3 (note).

It is not in order on a general appropriation bill to direct the activities of a committee (102–2, June 24, 1992, p ____), such as to require it to promulgate regulations to limit the use of an appropriation (96–1, June 13, 1979, pp 14670, 14671). And an amendment to a general appropriation bill including language to direct the budget scorekeeping for amounts appropriated was held to constitute legislation and was ruled out of order under clause 2 of Rule XXI. 103–1, May 26, 1993, p ____.

Other conditions relative to congressional action that have been ruled out as legislation include:

- An amendment providing that no part of the funds in the bill shall be used for the enforcement of any order restricting sale of any article or commodity unless such order shall have been approved by a concurrent resolution of the Congress. Deschler Ch 26 § 49.2.
- Language requiring that certain contracts be authorized by the appropriate legislative committees and in amounts specified by the Committees on Appropriations of the Senate and House. Deschler Ch 26 § 49.5.
- An amendment making the availability of funds in the bill contingent upon subsequent enactment of legislation containing specified findings. 98–1, Nov. 2, 1983, p 30503.
- An amendment changing a permanent appropriation in existing law to restrict its availability until all general appropriation bills are presented to the President. 100–1, June 29, 1987, p 18082.

§ 31. — Conditions Imposing Additional Duties

Where a condition in an appropriation bill or amendment thereto seeks to impose on a federal official substantial duties that are different from or in addition to those already contemplated in law, the provision may be ruled out as legislative in nature. Thus, while it is in order on a general appropriation bill to prohibit the availability of funds therein for a certain activity, that prohibition may not be made contingent upon the performance of a new affirmative duty on the part of a federal official. Deschler Ch 26 § 50. Other provisions that have been ruled out under this rule have included:

- An amendment providing that no part of the money appropriated shall be paid to any state unless and until the Secretary of Agriculture is satisfied that such state has complied with certain conditions. Deschler Ch 26 § 50.2.
- Language providing that no part of a certain appropriation shall be available until it is determined by the Secretary of the Interior that authorization therefor has been approved by the Congress. Deschler Ch 26 § 50.3.
- An amendment providing that none of the money appropriated shall be paid to persons in a certain category unless hereafter appointed or reappointed by the President and confirmed by the Senate. Deschler Ch 26 § 50.4.
- A paragraph prohibiting the use of funds to pay for services performed abroad under contract ''unless the President shall have promulgated'' certain security regulations. Deschler Ch 26 § 50.5.
- An amendment providing that no part of the appropriation shall be used for land acquisition for airport access roads until the FAA shall have held public hearings. Deschler Ch 26 § 50.6.
- An amendment rendering an appropriation for energy conservation services contingent upon recommendations by federal officials. Deschler Ch 26 § 50.7.
- Language making the availability of certain funds contingent on legal determinations to be made by a federal court and an executive department. 100–2, June 28, 1988, p 16261.

§ 32. Language Describing, Construing, or Referring to Existing Law

Generally

It is in order in a general appropriation bill to include language descriptive of authority provided in law so long as the description is precise and does not change that authority in any respect. Deschler Ch 26 § 23.1. But language in an appropriation bill construing or interpreting existing law, although cast in the form of a limitation, is legislation and not in order. Deschler Ch 26 § 24. Likewise, an amendment which does not limit or restrict the use or expenditure of funds in the bill, but which directs the way

in which provisions in the bill must be interpreted or construed, is legislation. Deschler Ch 26 § 25.15; 100–2, May 17, 1988, p 11305. The rationale underlying this rule is that a provision proposing to construe existing law is in itself a proposition of legislation and therefore not in order. 4 Hinds §§ 3936–3938; *Manual* § 842c. Language in a general appropriation bill which has been ruled out pursuant to this rule has included:

- Language broadening beyond existing law the definition of services to be funded by an appropriation. Deschler Ch 26 § 25.8.
- A provision defining certain expenses as ''nonadministrative,'' for purposes of making a computation. Deschler Ch 26 §§ 22.13, 25.4.
- A provision making appropriations available for purchase of station wagons ''without such vehicles being considered as passenger motor vehicles.'' Deschler Ch 26 § 22.12.
- An amendment construing certain language so as to permit the withholding of funds for specific military construction projects upon a determination that elimination of such projects would not adversely affect national defense. Deschler Ch 26 § 25.9.
- An amendment providing that nothing in the Act shall restrict the authority of the Secretary of Education to carry out the provisions of title VI of the Civil Rights Act of 1964. 96–2, Aug. 27, 1980, p 23535.
- A statement in the bill that a limitation on funds therein is to be considered a prohibition against payments to certain parties in administrative proceedings. 100–2, May 17, 1988, p 11305.
- A provision directing the Selective Service Administration to issue regulations to bring its classifications into conformance with a Supreme Court decision. 101–1, July 20, 1989, p 15405.
- An amendment which expresses the sense of Congress that reductions in appropriations in other bills should reflect the proportionate reductions made in the pending bill. 101–2, Oct. 21, 1990, p ____.

Incorporation by Reference to Existing Law

An amendment to a general appropriation bill which incorporates by reference the provisions of an existing law may be subject to a point of order. 88–1, Oct. 10, 1963, pp 19258–60. Thus, in 1976, a paragraph in a bill containing funds for the Corporation for Public Broadcasting to be available ''in accordance with the provisions of titles VI and VII of the Civil Rights Act of 1964'' was ruled out as legislation in violation of Rule XXI clause 2, where it could not be shown that the corporation was already sub-

ject to the provisions of that law. 94–2, June 24, 1976, pp 20414, 20415. Other provisions ruled out for the same reason have included:

- Language referring to conditions imposed on certain programs in other appropriation acts and making those conditions applicable to the funds being appropriated in the bill under consideration. Deschler Ch 26 § 22.6.
- Language in a general appropriation bill prescribing that the provisions of a House-passed resolution ''shall be the permanent law with respect thereto.'' Deschler Ch 26 § 22.7.

§ 33. Particular Propositions as Legislation

The rule (Rule XXI clause 2) that a proposition in a general appropriation bill may not change existing law has been applied to a wide variety of proposals. A sampling of these provisions, classified by subject matter, are set out below.

Provisions Relating to Agriculture

- An amendment curtailing the use of funds for price support payments to certain persons and defining the term ''person'' to mean an individual, partnership, firm, joint stock company, or the like. Deschler Ch 26 § 39.10.
- An amendment providing that certain loans be exclusively for the construction and operation of generating facilities for furnishing electric energy to persons in certain rural areas. Deschler Ch 26 § 39.5.
- A proviso that certain land banks shall be examined once a year instead of at least twice as provided by law, and changing the law with reference to salaries of employees engaged in such examinations. Deschler Ch 26 § 39.9.

Provisions Relating to Commerce

- A paragraph carrying an appropriation for all expenses of the Bureau of the Census necessary to collect, compile, analyze, and publish a sample census of business. Deschler Ch 26 § 40.5.
- Language providing that functions necessary to the compilation of foreign trade statistics be performed in New York instead of Washington, D.C. Deschler Ch 26 § 40.4.

Provisions Relating to Foreign Affairs

- A paragraph expressing the sense of the Congress concerning the representation of the Chinese government in the United Nations. Deschler Ch 26 § 41.4.
- An amendment providing that ''a reasonable amount'' of the funds provided to the Organization of American States may be available for distribution in certain underdeveloped areas in the United States. Deschler Ch 26 § 41.9.
- An amendment stating the sense of Congress that any new Panama Canal treaty must not abrogate or vitiate the ''traditional interpretation'' of past Panama Canal treaties, with special reference to territorial sovereignty. Deschler Ch 26 § 41.10.

Provisions Relating to Federal Employment

- A provision changing the compensation received by government employees under the law. 4 Hinds §§ 3871, 3881.
- A proposition to increase the number of employees fixed by law. 7 Cannon § 1456; Deschler Ch 26 § 43.13.
- Language authorizing a change in the manner of appointment of clerks. 4 Hinds § 3880.
- A provision permitting an executive official to delegate to an administratie officer the authority to make appointments of certain personnel. Deschler Ch 26 § 45.5.
- Language authorizing the Secretary of Defense to adjust the wages of certain civilian employees. 100–2, June 21, 1988, p 15450.
- A provision making it a felony for a member of an organization of government employees that asserts the right to strike against the government to accept salary or wages paid from funds contained in the pending bill. Deschler Ch 26 § 43.2.
- Language providing that the Secretary of State may, in his discretion, terminate the employment of an employee whenever he shall deem such termination necessary or advisable in the interests of the United States. Deschler Ch 26 § 43.4.
- Language exempting persons appointed to part-time employment as members of a civil service loyalty board from application of certain statutes. Deschler Ch 26 § 43.15.

Provisions Relating to Congressional Employment and Compensation

- Provisions increasing or providing additional salary to Members of Congress. Deschler Ch 26 § 44.1, 44.2.
- Language increasing the Members' telegraph, stationery, and telephone allowances. Deschler Ch 26 § 44.7.
- An amendment requiring a committee to promulgate rules to limit the amount of official mail sent by Members. Deschler Ch 26 § 44.10.
- An amendment providing that the clerk-hire roll of each Member be increased by one employee. Deschler Ch 26 § 44.3.

- An amendment proposing that each Member may pay to a clerk-hire employee $8,000 in lieu of $6,000 as basic compensation. Deschler Ch 26 § 44.5.
- An amendment changing the procedure for the employment of committee staff personnel. Deschler Ch 26 § 44.9.

Provisions Relating to Housing and Public Works Programs

- A provision restricting the contract authority of the Housing and Home Finance Administrator to an amount ''within the limits of appropriations made available therefor.'' Deschler Ch 26 § 45.3.
- Language prohibiting occupancy of certain housing by persons belonging to organizations designated as subversive and requiring such prohibition to be enforced by local housing authorities. Deschler Ch 26 § 45.1.
- An appropriation for the construction of buildings for storage of certain equipment and including a stated limit of cost for construction of any such building. Deschler Ch 26 § 45.7.
- A proposition to create ''necessary and special facilities'' for transporting the mails on railroads. 4 Hinds § 3804.

B. Changing Prescribed Funding

§ 34. In General

Generally; Mandating Expenditures

Language in a general appropriation bill is permitted where it is drafted simply as a negative restriction or limitation on the use of funds. § 50, infra. Such limitations may negatively affect the allocation of funds as contemplated in existing law, but may not explicitly change statutory directions for distribution. Deschler Ch 26 § 77.2. It is in violation of clause 2 of Rule XXI to include language in a general appropriation bill directing that funds therein be obligated or distributed in a manner that is contrary to existing law. 97–2, July 29, 1982, p 18637; 98–1, Oct. 5, 1983, p 27335. Language directing that funds in the bill shall be distributed ''without regard to the provisions'' of the authorizing legislation is subject to a point of order. Deschler Ch 26 § 36.1.

While the Appropriations Committee may report a limitation on the availability of funds within the reported bill, a limitation on the obligation of funds, or a removal of an existing statutory limitation on the obligation of funds contained in existing law, is legislation and in violation of clause 2 of Rule XXI. 103–1, Sept. 23, 1993, p ____.

If existing law places a limit or cap on the total amount that may be spent on a program, language in a general appropriation bill may not direct an increase in that amount. 4 Hinds §§ 3865–3867. Similarly, a provision

making available indefinite sums for a particular program may be ruled out as legislation in violation of Rule XXI clause 2 where existing law provides that a definite amount must be specified for that purpose in annual appropriation bills. Deschler Ch 26 § 33.1. Where mandatory funding levels have been earmarked for certain programs by existing law, a provision in a general appropriation bill rendering them ineffective may be ruled out as in violation of clause 2 of Rule XXI. Deschler Ch 26 § 36.5. In 1982, a paragraph in a general appropriation bill directing that ''not less'' than a specified sum be available for a certain purpose was ruled out as legislation constituting a direction to spend a minimum amount and not a negative limitation. 97–2, July 29, 1982, p 18623. An amendment to a general appropriation bill denying funds therein for a program at *less* than a certain amount constitutes legislation where existing law confers upon a federal official discretionary authority to determine minimum levels of expenditures. 95–2, July 20, 1978, p 21856. Language mandating a certain allotment of funds at ''the maximum amounts authorized'' has also been ruled out as legislation on an appropriation bill. Deschler Ch 26 § 36.2.

Language in a general appropriation bill may not authorize the adjustment of wages of government employees (101–1, Apr. 26, 1989, p 7525) or permit an increase in Members' office allowances only ''if requested in writing'' (101–2, Oct. 21, 1990, p ____). Nor may it mandate reductions in various appropriations by a variable percentage calculated in relation to ''overhead.'' 102–2, June 24, 1992, p ____.

Change in Source or Method of Funding

Where existing law authorizes appropriations out of a special fund for a particular purpose, it is not in order in an appropriation bill to direct that the money be taken from the general funds of the Treasury for that purpose. Deschler Ch 26 §§ 35.1, 35.2. Thus, language in a bill providing funds for an agricultural project, for which funding had been authorized from the receipts of timber sales and not from appropriated funds, was ruled out as legislation in violation of Rule XXI clause 2. Deschler Ch 26 § 35.3. The language in an appropriation bill appropriating funds in the Federal Aid Highway Trust Fund for expenses of forest roads and trails was held to be legislation and not in order where no authorization existed for the expenditure from the Highway Trust Fund for those proposed purposes. 86–2, Feb. 9, 1960, p 2348.

Language in a general appropriation bill that substitutes borrowing authority in lieu of a direct appropriation is subject to a point of order if contrary to existing law. Deschler Ch 26 § 35.4.

Changing Allotment Formulas; Setting Priorities

A provision in a general appropriation bill which changes the legislative formula governing the allotment of funds to recipients is legislation on an appropriation bill in violation of Rule XXI clause 2. Deschler Ch 26 § 36.10; 101–1, Aug. 2, 1989, p 18123; *Manual* § 842e. It is not in order in a general appropriation bill to establish priorities to be followed in the obligation or expenditure of the funds where such priorities are not found in existing law. Thus, a proviso specifying that an appropriation for veterans' job training be obligated on the basis of those veterans unemployed the longest time was conceded to be legislation where existing law did not require that allocation of funds, and was ruled out as in violation of Rule XXI clause 2. Deschler Ch 26 § 36.17.

Where existing law establishes priorities to be followed by an executive official in the distribution of funds, an amendment to an appropriation bill requiring that those funds be distributed in accordance with such priorities may under some circumstances be regarded as constituting a stronger mandate as to the use of those funds and ruled out as a modification of the authorizing law, and therefore out of order. Deschler Ch 26 § 23.8.

§ 35. Affecting Funds in Other Acts

Generally

Language in a general appropriation bill which is applicable to funds appropriated in another act may constitute legislation under Rule XXI clause 2. 86–1, June 29, 1959, p 12132. Thus, an amendment to an appropriation bill seeking to change a limitation on a previous appropriation bill may be held to be legislation and not in order. Deschler Ch 26 § 27.26.

Rescissions

Although under clause 2(b) of Rule XXI the Committee on Appropriations may report in a general appropriation bill ''rescissions of appropriations contained in appropriation Acts,'' under clause 2(c) of Rule XXI an amendment to a general appropriation bill may not change existing law, as by rescinding an appropriation contained in another Act.

§ 36. Transfer of Funds—Within Same Bill

Transfers of appropriations within the confines of the same bill are normally considered in order on a general appropriation bill if not containing legislative language. Deschler Ch 26 § 29; 86–1, Mar. 24, 1959, p 5102. Thus, a general provision in an appropriation bill permitting transfers of sums appropriated therein from one subhead to another in that enactment

was held not to constitute legislation. Deschler Ch 26 § 29.5. Likewise, a provision in an appropriation bill may permit certain funds to be available ''interchangeably'' for expenditure for various authorized purposes. Deschler Ch 26 § 29.8. And an amendment providing that a particular authorized project should be financed out of ''any available unallocated funds contained in this act'' was held to be in order. Deschler Ch 26 § 29.10. Such a provision may not include legislative language, however; in one instance, for example, language in a general appropriation bill authorizing the Secretary of Labor to allot or transfer, with the approval of the Director of the Budget, funds in the bill to an office within the Labor Department, was held to be legislation because it imposed additional duties on the Director of the Budget. Deschler Ch 26 § 29.1.

Language in a bill containing funds for an agency for certain activities and permitting transfers of those funds to other departments to carry out those activities (where existing law authorized appropriations only to the agency) has been ruled out in violation of Rule XXI clause 2. Deschler Ch 26 § 30.22. And a paragraph in a bill providing for transfers from the appropriation therein to ''any department or agency'' was ruled out in violation of Rule XXI clause 2 as constituting legislation on an appropriation bill. Deschler Ch 26 § 30.23.

§ 37. — Transfer of Previously Appropriated Funds

Language in an appropriation bill which is applicable to funds appropriated in another act constitutes legislation in violation of Rule XXI clause 2(b) (Deschler Ch 26 § 30.10), and may also constitute a reappropriation of unexpended balances in violation of clause 6 (Deschler Ch 26 § 30.20). Reappropriations generally, see § 60, infra. Thus, an amendment to an appropriation bill proposing the transfer of funds previously appropriated in another appropriation bill is legislation. Deschler Ch 26 § 30.1. A point of order will lie against language that attempts to transfer such funds from one department to another. Deschler Ch 26 §§ 30.16, 30.25.

§ 38. Making Funds Available Prior to, or Beyond, Authorized Period

Generally; Availability of Balances

It is provided by statute that the balance of an appropriation limited for obligation to a definite period is available only for payment of expenses properly incurred during the period of availability or to complete contracts properly made within that period of availability. 31 USC § 1502. And it is not in order in a general appropriation bill to provide that funds therein are

to be available beyond the fiscal year covered by the bill unless the authorizing law permits that availability. Deschler Ch 26 §§ 32.1, 32.10. Such language is held to ''change existing law'' in violation of Rule XXI clause 2 because it extends the use of the funds beyond the period permitted by law. Deschler Ch 26 § 32.11.

By statute, an appropriation in a regular, annual appropriation law may be construed to be permanent or available continuously only if the appropriation expressly provides that it is available after the fiscal year covered by the law, or unless the appropriation is for certain purposes, such as public buildings. 31 USC § 1301. Amounts appropriated to construct public buildings remain available until completion of the work. When a building is completed and outstanding liabilities for the construction are paid, balances remaining revert immediately to the Treasury. 31 USC § 1307.

Provisions in appropriation bills that have been ruled out under Rule XXI clause 2 on a point of order have included:

- Language providing funds to collect and publish certain statistics on voting, to be available until the end of the next fiscal year. Deschler Ch 26 § 32.6.
- Language making fees and royalties collected pursuant to law available beyond the current fiscal year. Deschler Ch 26 § 32.9.
- Language making an appropriation for a census available beyond the time for which it was originally authorized. Deschler Ch 26 § 22.2.
- Language making appropriations for the Migratory Bird Conservation Fund for the current year ''and each fiscal year thereafter'' from the sale of stamps. Deschler Ch 26 § 32.8.
- Language providing for funds for the Tennessee Valley Authority to be available for the payment of obligations chargeable against prior appropriations. Deschler Ch 26 § 32.16.

Funds ''To Be Immediately Available''

Language in an appropriation bill that the funds shall be immediately available—that is, prior to the start of the fiscal year covered by the bill—is subject to a point of order. A prior ruling permitting immediate availability, that is, prior to the start of the fiscal year covered by the bill (7 Cannon §§ 1119, 1120) has been superseded by more recent rulings proscribing such immediate availability. 99–2, July 29, 1986, p ____; 100–2, June 28, 1988, p ____. Making funds available in an earlier fiscal period may also have Budget Act implications. Under the Budget Act, a measure containing a new entitlement is subject to a point of order (see § 401(b)(1)) unless the entitlement (as defined by the Act) is to take effect after the start of the appropriate fiscal year. See, for example, 99–2, June 26, 1986, p 15729. See BUDGET PROCESS.

§ 39. Funds ''To Remain Available Until Expended''

Generally

Authorization bills sometimes provide that appropriated funds are ''to remain available until expended.'' Such language is permitted where existing law authorizes the inclusion of language extending the availability of funds for the purpose stated in that law. 99–1, June 11, 1985, p 15174. Conversely, where the authorizing statute does not permit funds to remain available until expended or without regard to fiscal year limitation, the inclusion of such availability in a general appropriation bill has been held to constitute legislation in violation of clause 2 Rule XXI. Deschler Ch 26 §§ 32.1, 32.2, 32.10. 99–1, June 6, 1985, p 14610. However, language that certain funds be ''available until expended'' may be included where other existing law can be interpreted to permit that availability. Thus, a provision in a general appropriation bill that funds therein for the construction of the west front of the U.S. Capitol shall ''remain available until expended'' was held not to constitute legislation in violation of Rule XXI clause 2 where an existing law (31 USC § 1307) provided that funds for public building construction shall remain available until the completion of the work. Deschler Ch 26 § 32.1.

Authority of Appropriations Committee to Confine Expenditure to Current Fiscal Year

While authorizing legislation sometimes provides that funds authorized therein shall ''remain available until expended,'' the Committee on Appropriations has never been required, when appropriating for those purposes, to specify that such funds *must* remain available until expended. Indeed, the Appropriations Committee often confines the availability of funds to the current fiscal year, regardless of the limit of availability contained in the authorization, and it may do so absent a clear showing that the language in question was intended to require appropriations to be made available until expended. Deschler Ch 26 § 32.21.

§ 40. Reimbursements of Appropriated Funds

If not authorized by existing law, language in a general appropriation bill providing for the use of funds generated from reimbursement, repayment, or refund, rather than from a direct appropriation, may be ruled out as legislation under Rule XXI clause 2. Deschler Ch 26 §§ 38.1 *et seq.* Pro-

visions in appropriation bills ruled out under this rule have included requirements:

- That ''all refunds, repayments, or other credits on account of funds disbursed under this head shall be credited to the appropriation.'' Deschler Ch 26 § 38.1.
- That appropriations contained in the Act may be reimbursed from the proceeds of sales of certain material and supplies. Deschler Ch 26 § 38.2.
- That any part of the appropriation for salaries and expenses be reimbursed from commissary earnings. Deschler Ch 26 § 38.4.
- That repayment of federal appropriations for a certain airport be made from income derived from operations. Deschler Ch 26 § 38.10.
- That money received by the United States in connection with any irrigation project constructed by the federal government shall be covered into the general fund until such fund has been reimbursed. Deschler Ch 26 § 38.11.
- That receipts from nonfederal agencies representing reimbursement for travel expenses of certain employees performing advisory functions to such agencies be deposited in the Treasury to the credit of the appropriation. Deschler Ch 26 § 38.13.
- That certain advances be reimbursable during a fixed period under rules and regulations prescribed by an executive officer. Deschler Ch 26 § 38.14.

C. Changing Executive Duties or Authority

§ 41. In General; Requiring Duties or Determinations

Generally

Where an amendment to or language in a general appropriation bill explicitly places new duties on officers of the government or implicitly requires them to make investigations, compile evidence, or make judgments and determinations not otherwise required of them by law, then it assumes the character of legislation under Rule XXI clause 2 and is subject to a point of order. 4 Hinds §§ 3854–3859; Deschler Ch 26 § 52; 91–1, July 31, 1969, pp 21653, 21675; *Manual* § 842d. The extra duties which may invalidate an amendment as being ''legislation'' are duties not now required by law. The fact that they may be presently in effect on a voluntary basis does not protect an amendment from a point of order under clause 2 Rule XXI. Deschler Ch 26 § 63.7 (note). The point of order will lie against language requiring new determinations by federal officials whether or not state officials administering the federal funds in question routinely make such determinations. Deschler Ch 26 § 52.33. Thus, in a general appropriation bill, if

not already mandated by existing law, an executive official may not be required:

- To make substantial findings in determining the extent of availability of funds. 97–2, Dec. 9, 1982, pp 29690, 29691.
- To make evaluations of propriety and effectiveness. 97–1, Oct. 6, 1981, p 23361; 100–2, May 25, 1988, pp 12270–72.
- To include information in the annual budget on transfers of appropriations. Deschler Ch 26 § 52.10.
- To make determinations, in implementing a personnel reduction program, as to which individual employees shall be retained. Deschler Ch 26 § 22.17.
- To implement certain conditions and formulas in determining amounts to be charged as rent for public housing units. Deschler Ch 26 § 52.20.

Approval or Certification Duties

Where existing law authorizes the availability of funds for certain expenses when certified by an executive official, language in a general appropriation bill containing funds for that purpose to be accounted for solely upon his certificate may be held in order as not constituting a change in existing law. 93–2, June 18, 1974, pp 19715, 19716. And appropriations for traveling expenses at meetings ''considered necessary'' in the exercise of the agency's discretion for the efficient discharge of its responsibilities were held authorized by a law permitting inclusion of such language in the bill. Deschler Ch 26 § 52.28. But language in a general appropriation bill authorizing the expenditure of funds on the approval of an executive official and on his ''certificate of necessity for confidential military purposes'' was held to change existing law and was ruled out in violation of Rule XXI clause 2 when the Committee on Appropriations failed to cite statutory authority for that method of payment. Deschler Ch 26 § 22.19. Even a proviso that certain vouchers ''shall be sufficient'' for expenditure from the appropriation has been ruled out as legislation in violation of Rule XXI clause 2. Deschler Ch 26 § 22.20.

Duty to Submit Reports

It is not in order on a general appropriation bill to require an executive official to submit reports not required by existing law. 7 Cannon § 1442; 93–2, Apr. 30, 1974, p 12419. In 1986, a provision requiring the Customs Service to submit a monthly report to a House committee detailing the number of district positions authorized and the number of positions vacant was conceded to require new determinations not required by law and ruled out as legislation. 99–2, Aug. 1, 1986, p 18647. And in one instance, where existing law required submission of certain agency reports on a quarterly basis,

language making the availability of funds therein contingent upon the prior submission of that report was held to change the reporting requirement established pursuant to law and to constitute legislation in violation of clause 2 of Rule XXI. 96–2, July 23, 1980, pp 19303, 19304.

§ 42. Burden of Proof

Generally

The burden of proof is on the proponent of an amendment to a general appropriation bill to show that a proposed executive duty or determination is required by existing law, and the mere recitation that it is imposed pursuant to existing law and regulations, absent a citation to the law imposing that responsibility, is not sufficient to overcome a point of order that the amendment constitutes legislation. Deschler Ch 26 § 22.25.

Determinations Incidental to Other Executive Duties

If a proposed executive determination is not specifically required by existing law, but is related to other executive duties, then the proponent has the burden of proving that it is merely incidental thereto. Thus, language in a general appropriation bill in the form of a conditional limitation requiring determinations by federal officials may be held to change existing law in violation of clause 2 Rule XXI, unless the Committee on Appropriations can show that the new duties are merely incidental to functions already required by law and do not involve substantive new determinations. 99–1, July 26, 1985, p 20808.

§ 43. Altering Executive Authority or Discretion

Generally

A proposition in a general appropriation bill that interferes with authority that has been conferred by law on an executive official ''changes existing law'' under Rule XXI clause 2. 4 Hinds § 3846; Deschler Ch 26 § 51.3. A proposition that significantly alters the discretion conferred on the official also ''changes existing law'' within the meaning of that rule. 4 Hinds §§ 3848–3852; 7 Cannon § 1437; *Manual* § 842d. Thus, where existing law authorized the expenditure of funds for a program under broad supervisory powers given to an executive official, provisions in an appropriation bill which impose conditions affecting both the exercise of those powers and the use of funds may be ruled out as legislation. Deschler Ch 26 § 51.4.

A provision in a general appropriation bill requiring the performance of a duty by a federal official which, under existing law he may at his discretion perform, constitutes legislation in violation of Rule XXI clause 2. 95–

2, Aug. 8, 1978, p 24960. And while it is in order on a general appropriation bill to limit the availability of funds therein for part of an authorized purpose (§ 52, infra), language which restricts not the funds but the discretionary authority of a federal official administering those funds may be ruled out as legislation. 93–2, June 21, 1974, p 20600.

Language in a general appropriation bill conferring discretionary authority on an executive official where none exists under existing law is subject to a point of order under Rule XXI clause 2. Deschler Ch 26 § 55.1. A proposition having the purpose of enlarging, rather than restricting, an official's discretion, may also be viewed as changing existing law. Deschler Ch 26 § 51. In 1951, language granting discretionary authority to the Secretary of the Army to use funds for purposes ''desirable'' in expediting military production was held to be legislation and not in order. Deschler Ch 26 § 59.7.

Earmarking Funds as Affecting Executive Discretion

The earmarking of funds for a particular item from a lump-sum appropriation may constitute a limitation on the discretion of the executive charged with allotment of the lump sum and thus be subject to a point of order under Rule XXI clause 2. 7 Cannon § 1452. Deschler Ch 26 § 51.5. See also 101–1, July 12, 1989, p 14432. In 1955, language earmarking some of the appropriations for the Veterans' Administration for a special study of its compensation and pension programs was conceded to be legislation and held not in order. Deschler Ch 26 § 55.12.

§ 44. Mandating Studies or Investigations

Language in a general appropriation bill describing an investigation which may be undertaken with funds in the bill at the discretion of an official upon whom existing law imposes a general investigative responsibility does not constitute legislation and is not in violation of Rule XXI clause 2. 93–2, Apr. 9, 1974, pp 10208, 10209. But where existing law gives an agency discretion to undertake an investigation, language in a general appropriation bill that requires the agency to make the investigation is legislation and subject to a point of order. Deschler Ch 26 § 51.7. And although an executive official may have broad investigative responsibilities under existing law, it may not be in order in a general appropriation bill to impose a duty on him to undertake a specific additional study. 93–2, Apr. 9, 1974, pp 10205, 10206.

The mere requirement in a general appropriation bill that an executive officer be the recipient of information is not considered as imposing upon him any additional burdens and is in order. 90–2, June 11, 1968, p 16712. Language has been upheld where it conditioned the availability of funds on

certain information being ''made known'' to an executive official. 7 Cannon § 1695. But language imposing new responsibilities on federal officials beyond merely being the recipients of information may constitute legislation in violation of Rule XXI clause 2. 95–1, June 17, 1977, pp 19699, 19700. Thus, in 1974, language in a general appropriation bill was ruled out as legislation when the Committee on Appropriations conceded that agencies funded by the bill would be required to examine extraneous documentary evidence—including hearing transcripts—in addition to the language of the law itself, to determine the purposes for which the funds had been appropriated. 93–2, June 21, 1974, pp 20612, 20613.

§ 45. Granting or Changing Contract Authority

Granting Authority

Language in a general appropriation bill authorizing a governmental agency to enter into contracts is legislation in violation of Rule XXI clause 2 if such authority is not provided for in existing law. 4 Hinds §§ 3868–3870; Deschler Ch 26 § 37.4. Although under existing law it may be in order to appropriate money for a certain purpose, it may not be in order in a general appropriation bill to grant authority to incur obligations and enter into contracts in furtherance of that purpose. Deschler Ch 26 §§ 37.3, 37.4. Thus, language authorizing the Secretary of the Interior to enter into contracts for the acquisition of land and making future appropriations available to liquidate those obligations was held legislation on an appropriation bill and not in order. Deschler Ch 26 § 37.8.

Waiving Contract Law

Language in a general appropriation bill which waives the requirements of existing law as to when certain contracts may be entered into may be ruled out as legislation in violation of Rule XXI clause 2. Deschler Ch 26 § 37.14. Thus, language providing that contracts for supplies or services may be made by an agency without regard to laws relating to advertising or competitive bidding was conceded to be legislation on an appropriation bill and held not in order. Deschler Ch 26 § 34.1.

Restricting Contract Authority

A provision in a general appropriation bill changing existing law by restricting the contract authority of an executive official may be ruled out on a point of order as legislation under Rule XXI clause 2. Deschler Ch 26 § 45.3. In one instance, an amendment requiring the Civil Aeronautics Authority to award contracts to the highest bidder only after previously adver-

tising for sealed bids was ruled out as legislation. Deschler Ch 26 § 46.3. In 1950, language authorizing an agency to enter into contracts for certain purposes in an amount not to exceed $7 million was conceded to be legislation on an appropriation bill and was ruled out absent citation to an existing law authorizing inclusion of such limitation. Deschler Ch 26 § 37.12. Language in an appropriation bill seeking to reduce or rescind contract authority contained in a previous appropriation bill has also been ruled out as legislation changing existing law. Deschler Ch 26 §§ 22.14, 24.4. This is so notwithstanding the adoption in 1974 of a rules change which gave the Appropriations Committee jurisdiction over rescissions of appropriations (as distinguished from rescission of contract authority). Deschler Ch 26 § 24.4 (note).

The rulings in this section should be considered in the light of § 401(a) of the Congressional Budget Act of 1974, which precludes consideration of measures reported by legislative committees providing new spending authority unless the measure also provides that such authority is to be effective ''only to such extent and in such amounts as are provided in appropriation Acts.'' Since the adoption of this law, language properly limiting the contractual authority of an agency, if specifically permitted by law, would not render that language subject to a point of order under Rule XXI clause 2. Deschler Ch 26 § 37.

D. The Holman Rule; Retrenchments

§ 46. In General; Retrenchment of Expenditures

Generally

The House rule that precludes the use of language changing existing law in a general appropriation bill makes an exception for ''germane provisions which retrench expenditures by the reduction of amounts of money covered by the bill'' as reported. Rule XXI clause 2(b). This exception is referred to as the Holman rule, having been named for the Member who first suggested it in 1876, William Holman of Indiana. *Manual* § 834.

Decisions under the Holman rule have been rare in the modern practice of the House. *Manual* § 844a. The rule applies to general appropriation bills only (7 Cannon § 1482), and is not applicable to funds other than those appropriated in the pending bill (7 Cannon § 1525). And in 1983, the House narrowed the Holman rule exception to apply only to retrenchments reducing the dollar amounts of money covered by the bill. *Manual* § 844a.

Retrenchments and Limitations Distinguished

A distinction should be noted between retrenchments offered under the criteria of the Holman rule and ''limitations'' on appropriation bills, discussed elsewhere in this article (§§ 50–59, infra). Under the Holman rule, a provision that is admittedly ''legislative'' in nature is nevertheless held to fall outside the general prohibition against such provisions, because it reduces the funds in the bill. The limitations discussed in later sections are not ''legislation'' and are permitted on the theory that Congress is not bound to appropriate funds for every authorized purpose. Deschler Ch 26 § 4.

Under the modern practice, the ''Holman Rule'' does not apply to limiting language that does not involve a reduction of dollar amounts in the bill. See *Manual* § 844a. An amendment which does not show a reduction on its face and which is merely speculative is not in order under the rule. 102–2, June 24, 1992, p ____.

The words ''amounts of money covered by the bill'' in the rule refer to the amounts specifically appropriated by the bill, but as long as a provision calls for an obvious reduction at some point in time during the fiscal year, it is in order under the Holman rule even if the reduction takes place in the future in an amount actually determined when the reduction takes place (for example, by formula). *Manual* § 844a. Language held in order as effectuating a retrenchment has included a proposition—legislative in form—providing that total appropriations in the bill be reduced by a specified amount. Deschler Ch 26 § 4.5.

It has been said that the Holman rule should be strictly construed in order to avoid the admission of ineligible legislative riders under guise of a retrenchment. 7 Cannon § 1510.

§ 47. Germaneness Requirements; Application to Funds in Other Bills

The Holman rule (Rule XXI clause 2), while permitting certain retrenchment provisions as an exception to the prohibition against legislation in appropriation bills, requires that such provisions be germane. *Manual* § 834. An amendment providing that appropriations ''herein and heretofore made'' be reduced by a reduction of certain employees was held to be legislative and not germane to the bill, since it went to funds other than those carried therein, and was therefore not within the Holman rule exception. 89–2, Oct. 18, 1966, p 27425. An amendment proposing to change existing law by repealing part of a retirement act was held not germane and not in order under the Holman rule. Deschler Ch 26 § 5.15.

§ 48. Reporting Retrenchment Provisions

At one time, retrenching provisions in general appropriation bills were reported by the legislative committees of the House. 7 Cannon § 1561. In 1983, the Holman rule was amended to eliminate the separate authority of legislative committees to report amendments retrenching expenditures; the new rule permits legislative committees to merely recommend such retrenchments to the Appropriations Committee for discretionary inclusion in the reported bill. *Manual* §§ 834, 844a.

§ 49. Floor Consideration; Who May Offer

A Member may offer in his individual capacity any germane amendment providing legislation on an appropriation bill if it retrenches expenditures under the conditions specified by Rule XXI clause 2(b). 7 Cannon § 1566. If an objection is made in the Committee of the Whole that the particular provision constitutes legislation, the proponent may cite the Holman rule in response to the point of order:

> MEMBER: Mr. Chairman, I make the point of order that the provision constitutes a legislative proposition in an appropriation bill in violation of Rule XXI clause 2(b).
>
> PROPONENT: Mr. Chairman, it is true that this is new legislation, but it retrenches expenditure, and is therefore in order under the Holman rule.

Under the earlier practice, retrenching amendments to general appropriation bills could be offered during the reading of the bill for amendment in the Committee of the Whole. In 1983, Rule XXI was narrowed to permit the consideration of retrenchment amendments only when reading of the bill has been completed and only if the Committee of the Whole does not adopt a motion to rise and report the bill back to the House. *Manual* § 834. Generally, see § 64, infra.

IV. Limitations on General Appropriation Bills

§ 50. In General; When in Order

Generally

While general appropriation bills may not contain legislation, limitations may validly be imposed under certain circumstances, where the effect is not to directly change existing law. Deschler Ch 26 § 1. The doctrine of limitations on a general appropriation bill has emerged over the years primarily from rulings of Chairmen of the Committee of the Whole. Deschler Ch 26 § 22.26. The basic theory of limitations is that, just as the House may de-

cline to appropriate for a purpose authorized by law, it may by limitation prohibit the use of the money for part of the purpose while appropriating for the remainder of it. The limitation cannot change existing law, but may negatively restrict the use of funds for an authorized purpose or project. Deschler Ch 26 § 64.

Set out below are the tests to be applied in determining whether language in an appropriation bill or amendment thereto constitutes a permissible limitation (from 7 Cannon § 1706 and Deschler Ch 26 § 64).

- Does the limitation apply solely to the appropriation under consideration?

  Note: A limitation may be attached only to the appropriation under consideration and may not be made applicable to moneys appropriated in other acts. § 59, infra.
- Does it operate beyond the fiscal year for which the appropriation is made?

  Note: A limitation must apply solely to the fiscal year(s) covered by the bill and may not be made a permanent provision of law. 4 Hinds § 3929.
- Is the limitation coupled with a phrase applying to official functions, and if so, does the phrase give affirmative directions in fact or in effect, although not in form?

  Note: A proposition to establish affirmative directions for an executive officer constitutes legislation and is not in order on a general appropriation bill. 4 Hinds § 3854.
- Is it accompanied by a phrase which might be construed to impose additional duties? Does it curtail or extend, modify, or alter existing powers or duties, or terminate old or confer new ones?

  Note: Limitations which change the duties imposed by law on an executive officer in the expenditure of appropriated funds is not in order. § 54, infra.
- Is the limitation authorized in existing law for the period of the limitation?

  Note: An amendment proposing a limitation not authorized in existing law for the period of the limitation is not in order during the reading of the bill by paragraph. Rule XXI clause 2(c); *Manual* § 834.

A restriction on authority to incur obligations contained in a general appropriation bill is legislative in nature and is not a limitation on use of funds in the bill. 100–1, July 13, 1987, pp 19505, 19506.

Certain amendments proposing limitations are in order only after the reading of the bill for amendment has been completed and, if a privileged motion to rise and report is offered (by the Majority Leader or his designee), is rejected. The House rules permit consideration at this time of amendments proposing limitations not contained or authorized in existing law or proposing germane amendments which retrench expenditures. Rule XXI clause 2(d). Retrenchment of expenditures, see § 46, supra.

Construction of Rule; Burden of Proof

The doctrine permitting limitations on a general appropriation bill is strictly construed. Deschler Ch 26 § 80.5. The language of the limitation must not be such as, when fairly construed, would change existing law (4 Hinds §§ 3976–3983) or justify an executive officer in assuming an intent to change existing law (4 Hinds § 3984; 7 Cannon § 1707). The language of Rule XXI clause 2(c), which permits limitation amendments during the reading of a bill by paragraphs only if authorized by existing law, is likewise strictly construed; it applies only where existing law requires or permits the inclusion of limiting language in an appropriation act, and not merely where the limitation is alleged to be ''consistent with existing law.'' 100–2, June 28, 1988, p 16267.

To be in order the limitation must apply to a specific purpose, or object, or amount of appropriation. If a proposed limitation goes beyond the traditionally permissible objectives of a limitation, as for example by restricting discretion in the timing of the expenditure of funds rather than restricting their use for a specific object or purpose, the Chair may rule that the amendment constitutes legislation in the absence of a convincing argument by the proponent that the amendment does not change existing law. Deschler Ch 26 § 80.5.

As a general proposition, whenever a limitation is accompanied by the words ''unless,'' ''except,'' ''until,'' ''if,'' or the like, there is ground to view the provision with the suspicion that it may be legislation; and in case of doubt as to its ultimate effect the doubt should be resolved on the conservative side. Deschler Ch 26 § 52.2. The limitation may not be accompanied by language stating a motive or purpose in carrying it out. Deschler Ch 26 § 66.4. Where terms used in a purported limitation are challenged because of their ambiguity or indefiniteness, the burden is on its proponent to show that no new duties would arise in the course of applying its terms. Deschler Ch 26 § 57.17 (note).

Effecting Policy Changes

While a limitation on a general appropriation bill may not involve changes of existing law or affirmatively restrict executive discretion, it may, by a simple denial of the use of funds, change administrative policy and be in order. Deschler Ch 26 § 51.15. For example, in one instance during consideration of an army appropriation bill in 1931, an amendment was allowed which provided that the funds appropriated could not be used for compulsory military training in certain schools. The Chair noted that the amendment ''simply refuses to appropriate for purposes which are authorized by law and for which Congress may or may not appropriate as it sees

fit,'' and that while the amendment did in fact change a policy of the War Department, ''a change of policy can be made by the failure of Congress to appropriate for an authorized object.'' 7 Cannon § 1694.

Limitations Relating to Tax and Tariff Measures

Revenue measures fall within the jurisdiction of the Committee on Ways and Means. Rule X clause 1(s). *Manual* § 688. Tax measures may not be reported by any committee not having jurisdiction thereof. Rule XXI clause 5(b). *Manual* § 846b. In determining whether a limitation in a general appropriation bill constitutes a tax measure proscribed by this clause, the Chair will consider argument as to the certainty of impact on revenue collections and tax status or liability. 99–2, Aug. 1, 1986, p 18649. A limitation on the use of funds contained in such a bill may be held to violate this clause where the limitation has the effect of requiring the collection of revenues not otherwise provided for by law (98–1, Oct. 27, 1983, pp 29611, 29612), or where it is shown that the imposition of the restriction on IRS funding for the fiscal year would preclude the IRS from collecting revenues otherwise due and owing by law (99–1, July 26, 1985, p 20806; 99–2, Aug. 1, 1986, p 18649). See also 101–2, July 13, 1990, p ____.

§ 51. Limitations on Amount Appropriated

Generally

A negative restriction on the use of funds above a certain amount in an appropriation bill is in order as a limitation. 91–1, July 30, 1969, p 21471. As long as a limitation on the use of funds restricts the expenditure of federal funds carried in the bill without changing existing law, the limitation is in order, even if the federal funds in question are commingled with non-federal funds which would have to be accounted for separately in carrying out the limitation. 96–2, Aug. 20, 1980, pp 22171, 22172.

''Not To Exceed'' Limitations

Language that an expenditure ''is not to exceed'' a certain amount is permissible. Deschler Ch 26 § 67.36. But the fact that funds in a general appropriation bill are included in the form of a ''not to exceed'' limitation does not preclude a point of order under clause 2(a), Rule XXI that the funds are not authorized by law. 100–2, June 21, 1988, pp 15438–40.

Ceilings on Total Expenditures

Many limitations on funding that are offered to general appropriation bills apply to only one of the agencies covered by the bill. But a limitation may be drafted in such a way as to place a ceiling on the total amount to

be expended by all agencies covered by the bill. Deschler Ch 26 §§ 80.1, 80.2.

Spending ''Floors''

Precedents holding in order negative restrictions on the use of funds must be distinguished from cases where an amendment, though cast in the form of a limitation, can be interpreted to require the spending of *more* money—for example, an amendment prohibiting the use of funds to keep less than a certain number of people employed. A ''floor'' on employment levels is tantamount to an affirmative direction to hire no fewer than a specified number of employees, and would be subject to a point of order as legislation. Deschler Ch 26 § 51.15 (note). That point of order will also lie against an amendment requiring not less than a certain sum to be used for a particular purpose where existing law does not mandate such expenditure. 97–2, July 29, 1982, p 18623.

§ 52. Limitations on Particular Uses

Generally

An amendment prohibiting the use of funds in a general appropriation bill for a certain purpose is in order, although the availability of funds for that purpose is authorized by law. Deschler Ch 26 § 64.1. Such limitations are in order even though contracts may be left unsatisfied thereby. Deschler Ch 26 § 64.25. An amendment to a general appropriation bill which is strictly limited to funds appropriated in the bill, and which is negative and restrictive in character and prohibits certain uses of the funds, is in order as a limitation even though its imposition will change the present distribution of funds and require incidental duties on the part of those administering the funds. Deschler Ch 26 § 67.19. Thus, it has been held in order in a general appropriation bill to deny the use of funds:

- For federal officials to formulate or carry out tobacco programs. 95–1, June 20, 1977, p 19882.
- To pay certain rewards. 96–1, July 13, 1979, p 18451.
- For implementation of any plan to invade North Vietnam. Deschler Ch 26 § 70.1.
- For the operation and maintenance of facilities where intoxicating beverages are sold or dispensed. Deschler Ch 26 § 70.4.
- To pay government employees a larger wage than that paid for the same work in private industry. 7 Cannon § 1591.
- For work on which naval prisoners were employed in preference to registered laborers and mechanics. 7 Cannon § 1646.
- For salaries or compensation for legal services in connection with any suit to enjoin labor unions from striking. 7 Cannon § 1638.

- For agriculture commodity programs under which payments to any single farmer would exceed a certain dollar amount. Deschler Ch 26 § 67.33.
- For expansion of court facilities at Flint, Mich. Deschler Ch 26 § 69.6.
- For dissemination of market information over government-owned or leased wires serving privately owned newspapers, radio, or television. Deschler Ch 26 § 67.9.

Partial Restrictions

An amendment to a general appropriation bill which restricts the use of money in the bill to a part of an authorized project is in order though the bill would otherwise permit full funding of the authorization. 91–1, July 22, 1969, p 20329. While it is not in order as an amendment to a general appropriation bill to directly restrict the discretionary authority of a federal agency (§ 53, infra), it is permissible to limit the availability of funds in the bill for part of an authorized purpose while appropriating for the remainder. 93–2, June 21, 1974, pp 20601, 20602. In the 95th Congress, the Chair indicated that an amendment to a general appropriation bill negatively restricting funding therein for part of a discretionary activity authorized by law would be in order if no new affirmative duties or determinations were thereby required. 95–2, June 9, 1978, p 16996.

Restrictions Relating to Agency Regulations

It is in order on a general appropriation bill to deny the use of funds to carry out an existing agency regulation. Deschler Ch 26 § 64.28. Thus, an amendment providing that no part of a lump sum shall be used to promulgate or enforce certain rules or regulations precisely described in the amendment was held to be a proper limitation restricting the availability of funds and in order. Deschler Ch 26 § 79.7. The fact that the regulation for which funds are denied may have been promulgated pursuant to court order and pursuant to constitutional provisions is an argument on the merits of the amendment and does not render it legislative in nature. Deschler Ch 26 § 64.28.

§ 53. Interference With Executive Discretion

Assuming that it does not change existing law, a negative restriction on the availability of funds for a specified purpose in a general appropriation bill may be a proper limitation even though it indirectly interferes with an executive official's discretionary authority by denying the use of funds. Deschler Ch 26 § 64.26. The limitation may in fact amount to a change in policy, but if the limitation is merely a negative restriction on use of funds, it will normally be allowed. 7 Cannon § 1694; Deschler Ch 26 § 51. Thus,

it is in order on a general appropriation bill to provide that no part, or not more than a specified amount, of an appropriation shall be used in a certain way, even though executive discretion be thereby negatively restricted. 4 Hinds § 3968; Deschler Ch 26 § 51.9.

On the other hand, it is not in order, under the guise of a limitation, to affirmatively interfere with executive discretion by coupling a restriction on the payment of funds with a positive direction to perform certain duties contrary to existing law. Deschler Ch 26 § 51.12. For example, an amendment prohibiting funds from being used to handle parcel post at less than attributable cost was ruled out on the point of order that its effect would directly interfere with the Postal Rate Commission's quasi-discretionary authority to establish postal rates under guidelines in law. Deschler Ch 26 § 51.22.

The point of order lies against language enlarging or granting new discretionary authority as well as to language curtailing executive discretion. An amendment in the form of a limitation providing that no part of the appropriated funds shall be paid to any state unless the Secretary of Agriculture is satisfied that the state has complied with certain conditions was held to be legislation imposing new discretionary authority on a federal official. Deschler Ch 26 § 52.25.

§ 54. Imposing Duties or Requiring Determinations

Generally; Imposing Executive Duties

While it is in order in a general appropriation bill to limit the use of funds for an activity authorized by law, the House may not, under the guise of a limitation in the bill, impose additional new burdens and duties on an executive officer. 91–1, July 31, 1969, pp 21631–33. Such a provision may be ruled out as legislation on a general appropriation bill in violation of clause 2 Rule XXI. 89–2, Oct. 4, 1966, p 24975. Of course, the application of any limitation on an appropriation bill places some minimal extra duties on federal officials, who, if nothing else, must determine whether a particular use of funds is prohibited by the limitation; but when an amendment, while curtailing certain uses of funds carried in the bill, explicitly places new duties on officers of the government or inevitably requires them to make investigations, compile evidence, discern the motives or intent of individuals, or make judgments not otherwise required of them by law, then it assumes the character of legislation and is subject to a point of order. Deschler Ch 26 § 52.4.

Requiring Executive Determinations

A restriction on the use of funds in a general appropriation bill which requires a federal official to make a substantive determination not required by any law applicable to his authority, thereby requiring new investigations not required by law, is legislation in violation of Rule XXI clause 2. Deschler Ch 26 § 52.38. Thus, it is not in order to require federal officials, in determining the extent of availability of funds, to make substantial findings not required by existing law (97–2, Dec. 9, 1982, pp 29690, 29691), or to make evaluations of propriety and effectiveness not required to be made by existing law (97–1, Oct. 6, 1981, p 23361). Language requiring new determinations by federal officials is subject to a point of order regardless of whether or not state officials administering the federal funds in question routinely make such determinations. Deschler Ch 26 § 61.12.

On the other hand, if the determinations required by the language are already required by law, no point of order lies. For example, an amendment denying funds to rehire certain federal employees engaged in a strike in violation of federal law was held in order as a limitation not requiring new determinations on the part of federal officials administering those funds, since existing law and a court order enjoining the strike already imposed an obligation on the administering officials to enforce the law. Deschler Ch 26 § 74.6.

Impermissible Duties or Determinations

Set out below are provisions offered to general appropriation bills that have been ruled out under Rule XXI clause 2 as imposing new duties or requiring new determinations not found in existing law:

- An amendment proposing a reduction of expenditures through an apportionment procedure authorized by law, but requiring such reduction to be made ''without impairing national defense.'' Deschler Ch 26 § 52.6.
- Language prohibiting use of funds for the furnishing of sophisticated weapons systems to certain countries ''unless the President determines'' it to be important to the national security, such determination to be reported within 30 days to the Congress. 91–2, June 4, 1970, p 18400.
- An amendment providing that no part of the appropriation could be used to make grants or loans to any country which the Secretary of State believed to be dominated by the foreign government controlling the world Communist movement. Deschler Ch 26 § 59.17.
- An amendment prohibiting payment of funds in the bill for the support of any action resulting in the destruction of a structure of historic or cultural significance. Deschler Ch 26 § 52.17.
- Language providing funds for grants to states for unemployment compensation ''only to the extent that the Secretary finds necessary.'' Deschler Ch 26 § 52.14.

- A paragraph requiring that appropriations in the bill be available for expenses of attendance of officers and employees at meetings or conventions ''under regulations prescribed by the Secretary.'' Deschler Ch 26 § 52.13.
- An amendment restricting the availability of funds for certain countries until the President reports to Congress his determination that such country does not deny or impose more than nominal restrictions on the right of its citizens to emigrate. Deschler Ch 26 § 55.5.
- An amendment denying the use of funds for foreign firms which receive certain government subsidies but permitting the President to waive such restriction in the national interest with prior notice to Congress. Deschler Ch 26 § 56.7.
- An amendment denying the use of funds for a certain publication until there had been a review of all conclusions reached therein and a determination that they were factual. 96–2, July 30, 1980, pp 20504–506.
- A provision limiting the availability of funds for grants-in-aid to any airport that failed to provide designated and enforced smoking and nonsmoking areas for passengers in airport terminal areas. 99–2, July 30, 1986, p 18188.
- A section restricting funds for special pay of physicians or dentists whose ''primary'' duties were administrative. 98–1, Nov. 2, 1983, p 30494.
- A provision restricting funds to carry out any requirement that small business meet certain prequalifications of ''acceptable'' product marketability to be eligible to bid on certain defense contracts. 98–1, Nov. 2, 1983, p 30495.

Determinations as to Intent or Motive

An amendment curtailing the use of the funds for certain purposes if the use is with a certain intent or motive requires new determinations by the officials administering the funds and is subject to a point of order as legislation. 91–1, July 31, 1969, pp 21653, 21675. Thus an amendment prohibiting the use of funds in the bill to pay rewards for information leading to the detection of any person violating certain laws, or ''conniving'' to do so, was ruled out as legislation since requiring the executive branch to determine what constitutes ''conniving'' at violating the law. 96–1, July 13, 1979, p 18451. Similarly, an amendment denying use of funds in the bill to grant business licenses to persons selling drug paraphernalia ''intended for use'' in drug preparation or use was ruled out as legislation requiring new duties and judgments of government officials. Deschler Ch 26 § 23.18. In the 93d Congress, an amendment prohibiting the use of funds in the bill for abortions or abortion-related services, and defining abortion as the ''intentional'' destruction of unborn human life, was conceded to impose new affirmative duties on officials administering the funds and was ruled out as legislation. Deschler Ch 26 § 25.14. And in 1984, a paragraph denying use

of funds in the bill to sell certain loans except with the consent of the borrower was conceded to be legislation requiring new determinations of ''consent'' and was ruled out in violation of clause 2(c) of Rule XXI. 98–2, May 31, 1984, p 14590.

Negative Prohibition and Affirmative Direction Distinguished

To be permitted in a general appropriation bill, a limitation must be in effect a negative prohibition on the use of the money, not an affirmative direction to an executive officer. 4 Hinds § 3975. When it assumes affirmative form by direction to an executive in the discharge of his duties under existing law, it ceases to be a limitation and becomes legislation. 7 Cannon § 1606. The limitation must be in effect a negative prohibition which proposes an easily discernible standard for determining the application of the use of funds. Deschler Ch 26 § 52.23.

Imposing ''Incidental'' Duties

The fact that a limitation on the use of funds may impose certain incidental burdens on executive officials does not destroy the character of the limitation as long as it does not directly amend existing law and is descriptive of functions and findings already required to be undertaken by existing law. Deschler Ch 26 § 71.2; *Manual* § 843c. Thus, an amendment reducing the availability of funds for trade adjustment assistance by amounts of unemployment insurance entitlements was held in order where the law establishing trade adjustment assistance already required the disbursing agency to take into consideration levels of unemployment insurance in determining payment levels. 96–2, June 18, 1980, p 15355.

The proponent should show that the new duties are merely incidental to functions already required by law and do not involve substantive new determinations. 99–1, July 26, 1985, p 20808.

Effect of Information ''Made Known''

As noted above (§ 44, supra), the mere requirement that the executive officer be the recipient of information is not considered as imposing upon him any additional burdens and is in order. Deschler Ch 26 § 52.5. Where the language on its face merely recites a passive situation as a condition precedent for receipt of funds, as opposed to imposing an ongoing responsibility on a federal official to ascertain information, the language may be a proper limitation. Deschler Ch 26 § 59.19 (note). Thus, a provision denying funds to an executive when certain information ''shall be made known'' to the executive has been upheld as a limitation. 7 Cannon § 1695. For a similar ''made known'' provision, see 103–1, June 30, 1993, p ____. See

also 101–1, Aug. 1, 1981, pp 17156–60, and 104–1, June 22, 1995, p ____, where motions to recommit general appropriation bills with ''made known'' limitations were ruled out as limitations which had not been considered in the Committee of the Whole and were thus not in order on the motion to recommit. See Rule XXI clause 2(d). (They were not challenged as ''legislation'' in violation of Rule XXI clause 2(c).)

Imposing Duties on Nonfederal Official

Under the modern practice, it is not in order to make the availability of funds in a general appropriation bill contingent upon a substantive determination by a state or local government official or agency which is not otherwise required by existing law. 81–1, Mar. 30, 1949, p 3531; 99–1, July 25, 1985, p 20569. See Deschler Ch 26 § 53 (note).

§ 55. — Duties Relating to Construction or Implementation of Law

Duty of Statutory Construction

While all limitations on funds on appropriation acts require federal officials to construe the language of that law in administering those funds, that duty of statutory construction, absent a further imposition of an affirmative direction not required by law, does not destroy the validity of the limitation. Deschler Ch 26 § 64.30. Thus, an amendment restricting the use of funds for abortion or abortion-related services and activities was upheld as a negative limitation imposing no new duties on federal officials other than to construe the language of the limitation in administering the funds. Deschler Ch 26 § 73.8. And it is in order on a general appropriation bill to deny funds for the payment of salary to a federal employee who is not in compliance with a federal law, if the limitation places no new duties on the federal official who is already charged with enforcing that law. Deschler Ch 26 § 52.34.

On the other hand, it is not in order in a general appropriation bill to limit the use of an appropriation and to provide how existing laws, rules, and regulations should be construed in carrying out the limitation. 96–1, July 16, 1979, p 18806. Nor is it in order to condition the availability of funds or contract authority upon an interpretation of local law where that determination is not required by existing law. 97–1, July 17, 1981, pp 16326, 16327.

Implementation of Existing Rules or Policies

It is in order on a general appropriation bill to make the availability of funds therein contingent upon the implementation of a policy already enacted into law, providing the description of that policy is precise and does not impose additional duties on the officials responsible for its implementa-

tion. 92–1, Nov. 17, 1971, p 41838. And an amendment prohibiting the use of funds in the bill to an agency to implement a ruling of the agency may be held in order as a limitation, where the amendment is merely descriptive of an existing ruling already promulgated by that agency and does not require new executive determinations. Deschler Ch 26 § 64.27.

§ 56. Conditional Limitations

Generally

The House may by limitation on a general appropriation bill provide that an appropriation shall be available contingent on a future event. 7 Cannon § 1579. However, it is not in order:

- To make the availability of funds in the bill contingent upon a substantive determination by an executive official which he is not otherwise required by law to make. 92–1, June 23, 1971, p 21647.
- To impose additional duties on an executive officer and to make the appropriation contingent upon the performance of such duties. 95–2, June 7, 1978, p 16677.
- To condition the use of such funds on the performance of a new duty not expressly required by law. 95–1, June 23, 1977, p 20597. 93–1, Apr. 17, 1973, p 12781.

To a bill making appropriations for the U.S. contribution to various international organizations, an amendment providing that none of the funds might be expended until all other members had met their financial obligations was ruled out as legislation which imposed a duty on a federal official to determine the extent of such obligations. Deschler Ch 26 § 59.16.

In one recent instance, an amendment limiting funds for foreign aid until the President submitted a report analyzing the effectiveness of U.S. economic assistance for each recipient country was held to change existing law and was ruled out of order as a violation of clause 2 of Rule XXI. 100–2, May 25, 1988, p 12270. But the imposition of certain incidental burdens on executive officials will not destroy the character of the limitation so long as those duties—such as statistical comparisons and findings of residence and employment status—are already mandated by law. 94–2, Aug. 25, 1976, p 27739.

Language in a general appropriation bill in the form of a conditional limitation requiring determinations by federal officials will be held to change existing law in violation of clause 2, Rule XXI unless the Committee on Appropriations can show that the new duties are merely incidental to functions already required by law and do not involve substantive new determinations. 99–1, July 26, 1985, p 20808.

A conditional limitation in a general appropriation bill is also subject to a point of order where the condition is not related to the expenditures specified in the bill. Where a bill contained funds not only for certain allowances for former President Nixon, and also for other departments and agencies, an amendment delaying the availability of all funds in the bill until Nixon had made restitution of a designated amount to the U.S. government was ruled out as not germane and as legislation, where that contingency was not related to the availability of other funds in the bill. 93–2, Oct. 2, 1974, pp 33620, 33621. Conditions as legislation on appropriation bills generally, see § 29, supra.

Condition Subsequent

Where the expenditure of funds made available in an appropriation bill is subject to a condition subsequent—so that spending is to cease upon the occurrence of a specified condition—the language may be upheld as a proper limitation on an appropriation bill, provided that it does not change existing law. This is so even though the contingency specified may never occur. Deschler Ch 26 § 67.2. Thus, a provision that an appropriation for the pay of volunteer soldiers should not be available longer than a certain period after the ratification of a treaty of peace was upheld as a limitation. 4 Hinds § 4004. Other conditions subsequent that have been upheld as limitations have included:

- An amendment stating that if the appropriations act were to be declared unconstitutional by the Supreme Court, none of the money provided could thereafter be spent. Deschler Ch 26 § 76.6.
- An amendment terminating the use of the appropriated funds after the passage of certain legislation pending before the Congress. Deschler Ch 26 § 64.10.

On the other hand, it is not in order in a general appropriation bill to restrict the discretionary authority of an executive official by a condition subsequent which changes existing law. 99–1, July 31, 1985, p 21909. For example, where existing law confers discretionary authority on an executive agency as to the submission of health and safety information by applicants for licenses, an amendment to a general appropriation bill restricting that discretion by requiring the submission of such information as a condition of receiving funds constitutes legislation. 96–1, June 18, 1979, pp 15286, 15287.

Conditions Relating to the Application or Interpretation of State Law

A limitation in a general appropriation bill may be upheld where it denies funds for a certain activity where that activity would be in violation of state law. But such a limitation may be subject to a point of order if

it imposes on federal officials a duty to become conversant with a variety of state laws and regulations. Whether such duty would constitute a new or additional duty not contemplated in existing law would then be at issue. Deschler Ch 26 § 67.8. 97–1, July 17, 1981, pp 16326, 16327.

Language in an appropriation bill which specifies that funds therein shall not be used for any project which ''does not have local official approval'' has been upheld as not imposing additional duties, and in order. 89–1, Oct. 14, 1965, p 26994.

§ 57. Exceptions to Limitations

An exception to a valid limitation in a general appropriation bill is in order, providing the exception does not add legislative language in violation of Rule XXI clause 2. Deschler Ch 26 §§ 64.14, 64.15, 66.7. An exception from a limitation on the use of funds stating that the limitation does not prohibit their use for certain designated federal activities may be held in order as not containing new legislation if those activities are already mandated by law. Deschler Ch 26 § 66.6. Set out below are other exceptions to limitations in general appropriation bills that have been held in order:

- An amendment inserting ''Except as required by the Constitution'' in provisions prohibiting the use of funds to force a school district to take action involving the busing of students. Deschler Ch 26 § 64.14.
- A paragraph denying use of funds for antitrust actions against units of local government, but providing that the limitation did not apply to private antitrust actions. Deschler Ch 26 § 66.10.
- In an amendment prohibiting the use of funds for food stamp assistance for certain households, language stating that such limitation did not apply to a household eligible for general assistance from a local government. Deschler Ch 26 § 64.15.

Exceptions to limitation amendments which fail to comply with the principle that limiting language must not contain legislation are subject to a point of order under Rule XXI clause 2. Deschler Ch 26 § 63.7. That point of order will lie, for example, against an exception from a limitation if it contains legislation requiring new executive determinations. 94–2, June 16, 1976, pp 18681, 18682. However, an exception from a limitation may include language precisely descriptive of authority provided in law so long as the exception only requires determinations already required by law and does not impose new duties on federal officials. Deschler Ch 26 § 66.3.

§ 58. Limitations as to Recipients of Funds

While it is not in order in a general appropriation bill to legislate as to qualifications of the recipients of an appropriation, the House may specify

that no part of the appropriation shall go to recipients lacking certain qualifications. 7 Cannon § 1655; *Manual* § 843a. See also Deschler Ch 26 § 53. It is in order to describe the qualifications of the recipients of the funds and to deny the availability of those funds to recipients not meeting those criteria, the restriction being confined to the fiscal year covered by the bill. 92–2, June 29, 1972, p 23364. It is likewise in order to deny the availability of funds in the bill to an office that fails to satisfy certain factual criteria, so long as no new substantive determinations are required. 95–2, June 14, 1978, p 17668.

Amendments requiring the recipients of funds carried in the bill to be in compliance with an existing law have been permitted where the concerned federal officials are already under an obligation to oversee the enforcement of existing law and are thus burdened by no additional duties by the amendment. 91–1, July 31, 1969, p 21633.

Set out below are limitations relating to the qualifications of recipients which have been held in order in a general appropriation bill:

- A limitation on payments from appropriated funds to persons receiving pay from another source in excess of a certain amount. 7 Cannon § 1669.
- An amendment providing that none of the funds for a program shall be paid to any person having a certain net income in the previous calendar year. Deschler Ch 26 § 67.3.
- An amendment proposing that no part of an appropriation for an agency shall be used for salaries of persons in certain positions who are not qualified engineers with at least 10 years' experience. Deschler Ch 26 § 76.2.
- An amendment denying funds to pay the compensation of persons who allocate positions in the classified civil service subject to a maximum age requirement. Deschler Ch 26 § 74.1.

An amendment to a general appropriation bill which denies the availability of funds in the bill for the benefit of a certain category of recipients but which requires federal officials to make additional determinations not required by law as to the qualifications of those recipients is legislation. 95–1, June 16, 1977, pp 19362–64. Such an amendment is legislation if it requires a federal official to subjectively evaluate the propriety or nature of

individual conduct. 96–2, Sept. 16, 1980, p 25604. Provisions ruled out of order as requiring additional determinations have included:

- An amendment denying funds for financial assistance to college students who had engaged in certain types of disruptive conduct, and requiring that the college initiate certain hearing procedures. Deschler Ch 26 § 61.4.
- An amendment prohibiting the use of ''impacted school assistance'' funds for children whose parents were employed on Federal property outside the school district. Deschler Ch 26 § 52.18.
- An amendment prohibiting the expenditure of funds in any workplace that was not free of illegal substances by requiring contract recipients to so certify and requiring contracts to contain provisions withholding payment upon violation. 100–2, May 18, 1988, p 11388.

§ 59. Limitations on Funds in Other Acts

A limitation must apply solely to the money of the appropriation under consideration and may not be applied to money appropriated in other acts. A limitation that is not confined to funds in the pending bill is legislation on an appropriation bill under Rule XXI clause 2 and not in order. 4 Hinds § 3927; 7 Cannon § 1495; Deschler Ch 26 §§ 27.2, 27.7, 27.8, 27.12, 27.16. And an amendment to an appropriation bill seeking to change a limitation on expenditures carried in a previous appropriation bill has been held to be legislation and not in order. Deschler Ch 26 §§ 22.9, 22.10. Language requiring future fiscal year funding to be subject to limitations to be subsequently specified is legislation and not in order. 99–2, May 8, 1986, p 10156.

Set out below are provisions in general appropriation bills that have been held out of order because they imposed a limitation that was not confined to the funds in the bill:

- An amendment providing that funds appropriated ''or otherwise made available'' for a public works project be limited to a certain use. 95–2, June 15, 1978, p 12831.
- Language in the form of a limitation providing no part of the appropriation contained ''in this or any other act'' be used for a certain purpose. Deschler Ch 26 § 27.20.
- Language in an appropriation bill providing that no part of ''any appropriation'' shall be used for a specified purpose. Deschler Ch 26 § 27.18.
- An amendment in the guise of a limitation providing that ''no appropriation heretofore made'' be used for a certain purpose. Deschler Ch 26 § 27.21.
- An amendment in the form of a limitation declaring that ''hereafter no part of any appropriation'' shall be available for certain purposes. Deschler Ch 26 §§ 27.16, 27.25.

- An amendment providing that none of the funds in the bill ''or elsewhere made available'' be used for a certain purpose. Deschler Ch 26 § 27.12.
- An amendment providing that ''total payments to any person'' under a soil conservation program shall not exceed a certain amount. Deschler Ch 26 § 27.5.

V. Reappropriations

§ 60. In General

Generally; Transfers Distinguished

A restriction against the inclusion of reappropriations in general appropriation bills is set forth in House Rule XXI clause 6. *Manual* § 847. Reappropriations are to be distinguished from transfers of funds, which are permitted under some circumstances. See §§ 36, 37, supra.

Prior to enactment of the Legislative Reorganization Act of 1946, provisions which reappropriated in a direct manner unexpended balances and continued their availability for the same purpose for an extended period of time were not prohibited by Rule XXI because they were not deemed to change existing law by conferring new authority. 4 Hinds § 3592; 7 Cannon § 1152; Deschler Ch 26 § 30. Today however, with two exceptions, a provision reappropriating unexpended balances may not be considered in a general appropriation bill or amendment thereto. Rule XXI clause 6. *Manual* § 847. Specifically excluded from the operation of this rule are (1) appropriations in continuation of appropriations for public works on which work has commenced, and (2) transfers of unexpended balances within the department or agency for which they were originally appropriated. *Manual* § 847. As to what constitutes a public work-in-progress under Rule XXI clause 1, see § 26, supra.

Rule XXI clause 6 is limited by its terms to general appropriation bills and amendments thereto, and the exceptions specified by it apply only to propositions reported by the Committee on Appropriations. *Manual* § 847. An unreported joint resolution carrying a transfer of unobligated balances of previously appropriated funds—and not containing an appropriation of any new budget authority—is not a ''general appropriation bill'' within the meaning of that rule. 100–2, Mar. 3, 1988, p 32335.

Provisions Subject to a Point of Order

Language in a general appropriation bill making available unobligated balances of funds appropriated in prior appropriation acts may constitute a reappropriation in violation of Rule XXI clause 6. Deschler Ch 25 § 3.2; 97–

2, July 29, 1982, p 18625; 100–2, June 28, 1988, p 16254. A provision transferring previously appropriated funds to extend their availability and to merge them with current-year funds is likewise in violation of clause 6. 98–1, Oct. 26, 1983, pp 29416, 29417. Unless permitted under one of the exceptions specified in the rule, the reappropriation is subject to a point of order even though the funds are sought for the same purpose as the original appropriation (Deschler Ch 25 § 3.3), and even though the original appropriation was authorized in law (102–2, July 28, 1992, p ____).

Authorization Bills and Reappropriations

Language in an appropriation bill continuing the availability of unobligated balances of prior appropriations is in order where provisions of the original authorizing legislation permit such a reappropriation and are still in effect. Deschler Ch 25 § 3.8. Rule XXI clause 6 is not applicable to appropriation bills when the reappropriation language is identical to legislative authorization language enacted subsequent to the adoption of the rule, since the authorizing law is a more recent expression of the will of the House. Deschler Ch 25 § 3.7.

VI. Reporting; Consideration and Debate

A. Generally

§ 61. Privileged Status; Voting

Generally

General appropriation bills have long enjoyed a privileged status under the rules of the House. Subject to a three-day layover requirement (§ 62, infra) such bills may be reported ''at any time'' under Rule XI clause 4(a). *Manual* § 726. Generally, see COMMITTEES. In 1981, this privilege was extended to joint resolutions continuing appropriations for a fiscal year if reported after September 15 preceding the beginning of such fiscal year. *Manual* § 726. The privilege does not extend to special appropriations to address a specific purpose. 8 Cannon § 2285. Similarly, a joint resolution providing an appropriation for a single government agency is not a general appropriation bill and is not reported as privileged. Deschler Ch 25 § 7.4.

Nonprivileged appropriation bills may be made in order by unanimous consent or pursuant to a special rule reported by the Committee on Rules. Deschler Ch 25 § 6. Generally, see § 75, infra.

The yeas and nays are automatically ordered when the Speaker puts the question on final passage or adoption of any bill, joint resolution, or con-

ference report making general appropriations. Rule XV clause 7; *Manual* § 774e.

Prior Consideration in the Committee of the Whole

All bills that make appropriations—indeed all proceedings ''touching appropriations''—require consideration first in Committee of the Whole, and a point of order made pursuant to this rule is good at any time before the consideration of a bill has commenced. Rule XXIII clause 3. *Manual* § 865. Filing an appropriation bill ''as privileged'' permits a later privileged motion that the House resolve itself into the Committee of the Whole for the purpose of considering the bill. Rule XVI clause 9. *Manual* § 802.

To require consideration in Committee of the Whole under Rule XXIII clause 3, a bill must show on its face that it falls within the requirements of the rule. 4 Hinds §§ 4811–4817; 8 Cannon § 2391. Where the expenditure is a mere matter of speculation (4 Hinds §§ 4818–4821), or where the bill might involve a charge on the Treasury but does not necessarily do so (4 Hinds §§ 4809, 4810), the rule does not apply. In passing on the question as to whether a proposition involves a charge upon the Treasury, the Speaker is confined to the provisions of the text and may not take into consideration personal knowledge not directly deducible therefrom. 8 Cannon §§ 2386, 2391. But where a bill sets in motion a train of circumstances destined ultimately to involve Treasury expenditures, it must be considered in Committee of the Whole. 4 Hinds § 4827; 8 Cannon § 2399. The requirements of the rule apply to amendments as well as to bills. 4 Hinds §§ 4793, 4794. Indeed, the rule applies to any portion of a bill requiring an appropriation, even though it be merely incidental to the bill's main purpose. 4 Hinds § 4825. Senate amendments, see § 70, infra.

Consideration in the House as in the Committee of the Whole

Pursuant to a special order previously agreed to, an appropriation bill may be called up as if privileged and considered in the House as in the Committee of the Whole (meaning that the bill is considered as read and open to amendment at any point under the five-minute rule, without general debate). 89–1, Oct. 13, 1965, p 26881; 89–1, Sept. 28, 1965, p 25342; 91–1, June 24, 1969, pp 17015–17; 91–2, June 24, 1970, p 21239. And on numerous occasions the House has by unanimous consent provided for the consideration of an appropriation bill in the House as in the Committee of the Whole. 87–2, June 14, 1962, p 10481; 89–1, July 28, 1965, pp 18578, 18580; 89–1, Oct. 13, 1965, p 26881.

§ 62. When Bills May Be Considered

The privilege given to general appropriation bills under the House rules is subject to the requirement that such bills may not be considered in the House until printed committee hearings and a committee report thereon have been available to the Members for at least three calendar days (excluding Saturdays, Sundays, and legal holidays if not in session). Rule XXI clause 7. *Manual* § 848. Other reports of the committee are governed by a similar three-day layover requirement under Rule XI. *Manual* § 715. In counting the ''three calendar days,'' the date the bill is filed or the date on which it is to be called up for consideration are counted, but not both. *Manual* § 848.

The three-day layover requirement may be waived by unanimous consent (87–2, Sept. 12, 1962, p 19237) or pursuant to the adoption of a special rule from the Committee on Rules (95–1, Mar. 15, 1977, p 7613).

§ 63. Debate; Consideration of Amendments

Generally; Perfecting Amendments

Amendments perfecting a general appropriation bill are considered in the Committee of the Whole during the reading of the bill for amendment under the five-minute rule. See Rule XXIII clause 5(a). *Manual* §§ 870, 872. General appropriation bills are read for amendment by paragraph—unless a special rule provides otherwise—whereas bills appropriating for a specific purpose are read by sections. 4 Hinds §§ 4739, 4740; Deschler Ch 25 § 11.8.

An amendment to a paragraph in a general appropriation bill must be offered immediately after that paragraph is read by the Clerk. 91–2, Apr. 14, 1970, p 11648. Amendments are in order only to the paragraph just read, not to the entire subject matter under a heading in the bill. Deschler Ch 25 § 11.9. An amendment to a paragraph which has been passed during the reading of the bill may be offered only by unanimous consent. 92–2, June 15, 1972, pp 21118–22; Deschler Ch 25 § 11.13. And where the Clerk has read a paragraph in title II, an amendment to insert a new section at the end of title I may be offered only by unanimous consent. 93–2, June 18, 1974, pp 19709, 19710.

Where an initial (sub)paragraph in a general appropriation bill appropriates an aggregate amount from a special fund for specific projects which are delineated and separately funded in subsequent (sub)paragraphs, each project will be treated as part of the entire paragraph so as to permit the offering as one amendment of proposals to change a particular project and to adjust the aggregate amount accordingly. 102–2, July 1, 1992, p ____, (reversing a ruling at 98–2, Nov. 30, 1982, p 28066).

En Bloc Amendments

En bloc amendments proposing only to transfer appropriations among objects in the bill and without increasing the levels of budget authority or outlays in the bill, are in order during the reading of the bill for amendment in the Committee of the Whole. Such amendments may amend portions of the bill not yet read for amendment and are not subject to a demand for division of the question. Rule XXI clause 2(f) (adopted in 1995).

Consideration in the House

Amendments adopted in the Committee of the Whole are reported to the House for action. During consideration of the bill in the House, it is in order to demand that those amendments be voted on separately. Deschler Ch 25 § 11.21.

§ 64. — Limitation Amendments; Retrenchments

Amendments Authorized in Existing Law

Limitation amendments ''specifically contained or authorized in existing law for the period of the limitation'' may, pursuant to clause 2(c), Rule XXI, be offered in the Committee of the Whole during the reading of a general appropriation bill for amendment. See *Manual* § 834 (note). However, that rule is strictly construed to apply only where existing law requires or permits the inclusion of limiting language in an appropriation act, and not merely where the limitation is alleged to be ''consistent with existing law.'' 100–2, June 28, 1988, p 16267.

Limitation Amendments Not Authorized in Existing Law; Retrenchment Amendments

In 1983 and in 1995, the House adopted and then modified procedures for the consideration of retrenchment and limitation amendments: such amendments are in order (1) only when reading of the bill has been completed and (2) only if the Committee of the Whole does not adopt a motion, if offered by the Majority Leader or his designee, to rise and report the bill back to the House. *Manual* § 834f (note). Pursuant to Rule XXI clause 2(d), a general appropriation bill must be read for amendment *in its entirety* (including the short title of the bill if part of the text) before retrenchments or amendments proposing limitations are in order; and the motion that the Committee of the Whole rise and report the bill to the House with any other amendments already adopted then takes precedence over an amendment proposing the limitation or retrenchment. 98–1, June 2, 1983, pp 14317, 14318. Deschler Ch 26 § 1.6. Under that rule, an amendment proposing a limitation

not specifically contained or authorized in existing law for the period of the limitation is not in order during the reading of the bill (99–2, July 30, 1986, p 18214), and if offered at the completion of the reading, can be entertained only if a preferential motion to rise and report, if offered, is rejected (99–2, July 23, 1986, p 17431). See also 100–2, June 15, 1988, p 16267. However, the amendment with the limitation if offered first may be considered as pending upon rejection by the Committee of the preferential motion to rise and report. 99–1, July 30, 1985, pp 21534–36.

Unlike an amendment proposing a limitation or a retrenchment, an amendment simply reducing an amount provided in a general appropriation bill is not subject to the requirements of clause 2(d) of Rule XXI and need not await the completion of the reading and the disposition of other amendments or to yield to a preferential motion to rise and report. 102–2, June 30, 1992, p ____.

§ 65. Points of Order—Reserving Points of Order

Generally

Points of order may be raised in the Committee of the Whole to enforce the requirements imposed on general appropriation bills by the House rules, such as the prohibition against unauthorized appropriations (§§ 10–14, supra), the restriction against legislation in general appropriation bills (§ 27, supra) and the proscription against the inclusion of reappropriations of unexpended balances (§ 60, supra).

Under the former practice, points of order ordinarily had to be reserved against a general appropriation bill at the time the bill was reported to the House and referred to the Union Calendar, and could be reserved after the bill had been referred to the Committee of the Whole only by unanimous consent. Deschler Ch 25 § 12.1. Under new Rule XXI clause 8, adopted in 1995, it is no longer necessary to reserve points of order at the time the bill is referred to the Union Calendar; Members' rights to later raise them are automatically protected. 104–1, Jan. 4, 1995, p ____.

Against Amendments

In the Committee of the Whole, the reservation of a point of order against an amendment to an appropriation bill is within the discretion of the Chair, but if permitted must be reserved before debate begins on the amendment. Deschler Ch 26 § 2.2. See also POINTS OF ORDER.

§ 66. — Timeliness

Generally; Points of Order Against Paragraphs

A point of order against a provision in a general appropriation bill may not be entertained during general debate but must await the reading of that portion of the bill for amendment. 103–1, June 18, 1993, p ____. The time for making points of order against items in an appropriation bill is after the House has resolved itself into the Committee of the Whole and after the paragraph containing such items has been read for amendment. Deschler Ch 25 § 12.8. A point of order against the paragraph on the ground that it is legislation will not lie before the paragraph is read. Deschler Ch 26 § 2.10; 99–1, June 6, 1985, pp 14605, 14609. A point of order against two consecutive paragraphs comprising a section in the bill can be made only by unanimous consent. Deschler Ch 25 § 12.5. The proper time to raise a point of order against language in the paragraph is after the paragraph has been read but before debate starts thereon. 86–2, May 24, 1960, p 10979; 95–2, June 14, 1978, pp 17624, 17626.

Points of order against a paragraph must be made before an amendment is offered thereto or before the Clerk reads the next paragraph heading and amount. Deschler Ch 26 § 2; *Manual* § 835. A point of order against a paragraph which has been passed in the reading for amendment may be made only by unanimous consent. 97–2, Nov. 30, 1982, p 28066.

A point of order must be made against a paragraph after it is read and before an amendment is offered thereto even if the amendment is ruled out of order. Deschler Ch 26 § 2.21. However, the point of order is not precluded by the fact that, by unanimous consent, an amendment had been offered to the paragraph before it was read. 91–1, July 31, 1969, p 21677.

Timeliness Where Bill is Considered as Having Been Read

Where a general appropriation bill or a portion thereof (a title, e.g.) is considered as having been read and open to amendment by unanimous consent, points of order against provisions therein must be made before amendments are offered, and cannot be reserved pending subsequent action on amendments. Deschler Ch 26 § 2; *Manual* § 835. 97–1, July 13, 1981, p 15548; 98–1, Oct. 26, 1983, pp 29409, 29410. In this situation, the Chair first inquires whether any Member desires to raise a point of order against any portion of the pending text, and then recognizes Members to offer amendments to that text. Deschler Ch 26 § 2.15. A point of order comes too late if it is made after the Chairman has asked for amendments after having asked for points of order. Deschler Ch 26 § 2.16.

Where an appropriation bill partially read for amendment is then opened for amendment ''at any point'' (rather than for ''the remainder of the bill''), points of order to paragraphs already read may yet be entertained. Deschler Ch 26 § 2.14.

Points of Order Against Amendments

Points of order against proposed amendments to a general appropriation bill must be made or reserved immediately after the amendment is read. After a Member has been granted time to address the Committee of the Whole on his amendment, it is too late to make a point of order against it. Deschler Ch 26 § 12.13.

§ 67. — Points of Order Against Particular Provisions

Generally; Against Paragraphs of Bill

Points of order against unauthorized appropriations or legislation on general appropriation bills may be raised against an entire paragraph or a portion only of a paragraph (4 Hinds § 3652; 5 Cannon § 6881); and the fact that a point is made against a portion of a paragraph does not prevent another point against the whole paragraph (5 Cannon § 6882; 99–1, July 31, 1985, p 21895).

Where a point of order is made against an entire paragraph in an appropriation bill on the ground that a portion thereof is in conflict with the rules of the House and the point of order is sustained, the entire paragraph is eliminated. 95–1, June 29, 1977, p 21402; Deschler Ch 26 § 2.4. Similarly, where a point of order is made against an entire proviso on the ground that a portion of it is subject to the point of order, and the point of order is sustained, the entire proviso is eliminated. Deschler Ch 26 § 2.6. A point of order, if made and sustained against a portion of a paragraph containing legislation, is sufficient to cause the entire paragraph to be stricken even if the remainder of the paragraph is authorized. 95–1, June 8, 1977, pp 17922, 17923. 99–1, July 31, 1985, p 21895.

Against Amendments

If any portion of an amendment to an appropriation bill constitutes legislation, the entire amendment is subject to a point of order. 95–2, Aug. 7, 1978, p 24708.

A point of order against an amendment as legislation on a general appropriation bill must be determined in relation to the bill in its modified form (as affected by disposition of prior points of order). Deschler Ch 26 § 2.24.

§ 68. — Waiving Points of Order

Generally; Alternative Procedures

Points of order against a general appropriation bill may be waived in various ways:

- By unanimous consent. Deschler Ch 26 § 31.
- By special rule (a resolution) from the Rules Committee. 4 Hinds §§ 3260–3263; Deschler Ch 26 § 3; *Manual* § 842f.
- By motion to suspend the rules. 4 Hinds § 3845.
- By failure to make a timely point of order. Deschler Ch 26 § 3.17.

> *Note:* Although legislation in an appropriation bill may be subject to a point of order under Rule XXI clause 2, if not challenged it becomes permanent law where it is permanent in its language and nature. Deschler Ch 26 § 3.17.

Waiver of Points of Order By Special Rule

A waiver of points of order pursuant to a special rule from the Rules Committee may be couched in broad terms, as where it seeks to protect the entire bill against points of order. Deschler Ch 26 § 3.14. Or the waiver may be confined to points of order directed at a particular title (Deschler Ch 26 § 3.7) or a specified chapter (Deschler Ch 26 § 3.8) of the bill. A waiver may be very limited in scope, as where it permits points of order against portions of certain paragraphs but not against entire paragraphs. 97–1, July 10, 1981, p 15331; 97–1, July 30, 1981, p 18803.

Waiver of Particular Points of Order

The House, by adoption of a special rule from the Committee on Rules, may waive points of order:

- Against certain paragraphs in an appropriation bill not authorized by law or containing legislative language. Deschler Ch 26 §§ 3.2, 3.6; 98–2, June 27, 1984, p 19129; 98–2, July 25, 1984, pp 20979, 20981, 20989.
- Against reappropriations in violation of clause 6 Rule XXI. 97–1, July 10, 1981, p 15331; 97–1, July 30, 1981, p 18803.
- Against consideration of a bill containing new budget authority in excess of allocations to subcommittees and for failure of the committee report to contain a comparison of spending in the bill with subcommittee allocations. 99–2, Apr. 22, 1986, pp 8343, 8344, 8348.
- Against consideration of the bill until printed committee hearings and the committee report have been available for three days (Deschler Ch 25 § 10.3) as is required by the two layover rules of the House. 99–2, July 17, 1986, p 16680; 99–2, Aug. 1, 1986, p 18625.

> *Note:* Both of the three-day rules apply and may need to be waived, as the specific rule, clause 7, Rule XXI, does

not supersede the more general rule in clause 2(l)(6), Rule XI, which covers all reports.

Application of Waiver to Points of Order Against Amendments

Although points of order against the particular provisions of a bill may be waived by unanimous consent or special rule, such waiver will not preclude points of order against amendments offered from the floor unless the waiver is made specifically applicable to such amendments. Deschler Ch 26 § 3. Thus, where a general appropriation bill is considered under terms of a special rule waiving points of order ''against said bill,'' the waiver applies only to the provisions of the bill and not to amendments thereto. Deschler Ch 26 § 3.14. But a special rule waiving points of order may be drafted in such a way as to protect a specific amendment (Deschler Ch 26 § 3.10) or to protect ''any amendment offered by direction of the Committee on Appropriations.'' Deschler Ch 26 § 3.11.

§ 69. Amending Language Permitted to Remain

When In Order

Language that has been permitted to remain in a general appropriation bill or amendment by virtue of a waiver may be modified by a further amendment if it is germane and does not contain additional legislation or additional unauthorized items. 4 Hinds § 3862; 7 Cannon § 1420; Deschler Ch 26 § 3. 90–1, Nov. 16, 1967, p 32886; 91–1, May 21, 1969, p 13271. And where an unauthorized appropriation is permitted to remain in the bill by failure to raise, or by waiver of, a point of order, an amendment merely changing the amount and not adding legislative language or earmarking separate funds for another unauthorized purpose is in order. Deschler Ch 26 § 3.38; 99–1, July 17, 1985, p 19435. However, an increase in the amount may be vulnerable as a Budget Act violation under §§ 302 or 311 of the Budget Act.

When Not In Order

Although legislative language in a general appropriation bill which is permitted to remain therein because of a waiver of points of order may be perfected by germane amendment, such an amendment may not, under Rule XXI clause 2, add additional legislation. 4 Hinds §§ 3836, 3837; 7 Cannon §§ 1425–1434; 101–1, Aug. 2, 1989, p ____. Nor may such an amendment earmark funds for an unauthorized purpose (Deschler Ch 26 § 3.30) or direct a new use of funds not required by law (*Manual* § 842f). The figures in an unauthorized item permitted to remain may be perfected but the provision may not be changed by an amendment substituting funds for a different un-

authorized purpose. Deschler Ch 26 § 3.45. Nor may an increase in such figure be accompanied by legislative language directing certain expenditures. 94–2, June 18, 1976, p 19297. Amendments to language permitted to remain in an appropriation bill which have been ruled out under Rule XXI clause 2 have included:

- An amendment adding additional legislation prohibiting the availability of funds in other acts for certain other purposes. 93–1, Aug. 1, 1973, pp 27291, 27292.
- An amendment adding an additional class of recipients to those covered by a legislative provision permitted to remain. 98–1, June 22, 1983, pp 16850, 16851.
- An amendment adding further unauthorized items of appropriation or adding legislation in the form of new duties. 99–2, July 23, 1986, pp 16850, 16851.
- An amendment broadening the application of a legislative provision permitted to remain so as to apply to other funds. 100–2, June 28, 1988, p 16212; *Manual* § 836.
- An amendment adding a new paragraph in another part of the bill which indirectly increases an unauthorized amount passed in the reading. 104–1, July 12, 1995, p ____.

B. Senate Amendments

§ 70. In General

Senate Amendments Before Stage of Disagreement

While Rule XX clause 1 requires any Senate amendment involving a new and distinct appropriation to be first considered in a Committee of the Whole (*Manual* § 828a), the modern practice bypasses this requirement by sending appropriation bills with Senate amendments directly to conference either by unanimous consent or a motion under clause 1, notwithstanding the fact that the stage of disagreement has not been reached (92–2, Aug. 1, 1972, p 26153). Thus earlier precedents (4 Hinds §§ 4797–4806; 8 Cannon §§ 2382–2385) governing initial consideration of Senate amendments to appropriation bills in Committee of the Whole are largely anachronistic, and the practices discussed below regarding disposition of Senate amendments normally involve the post-conference stage of consideration where the stage of disagreement has been reached and motions in the House to dispose of Senate amendments are privileged (*Manual* §§ 528a–d).

Amending Senate Amendments

A point of order under Rule XXI clause 2 does not lie against a Senate amendment to a House general appropriation bill. See *Manual* §§ 829, 842g; 7 Cannon § 1572. Where a Senate amendment on a general appropriation bill proposes an expenditure not authorized by law, it is in order in the House to perfect such Senate amendment by germane amendments. Deschler Ch 25 § 13.13; Deschler Ch 26 § 6.1. Similarly, where the Senate attaches a ''legislative'' amendment to the bill, it is in order in the House to concur with a perfecting amendment provided such amendment is germane to the Senate amendment. Deschler Ch 25 § 13.14. In amending a Senate amendment the House is not confined within the limits of the amount set by the original bill and the Senate amendment. Deschler Ch 25 § 13.15.

Amendments Reported in Disagreement

A Senate amendment containing legislation reported from conference in disagreement (see § 71, infra) may be amended by a germane amendment even though the proposed amendment is also legislative. Deschler Ch 26 § 6.9; *Manual* § 842g. Although Rule XX clause 2 prohibits House conferees from agreeing to a Senate amendment which proposes legislation on an appropriation bill without specific authority from the House, that rule is a restriction upon the managers only, and does not provide for a point of order against such amendment when it is reported in disagreement and comes up for separate action by the House. 7 Cannon § 1572. It is customary for the managers to report such amendments in technical disagreement; after disposing of the conference report, which includes those Senate amendments not in violation of clause 2, Rule XXI, whether reported in technical or true disagreement, are taken up in order and disposed of directly in the House by separate motion. 7 Cannon § 1572; *Manual* § 829. Accordingly, where a Senate amendment proposing legislation on a general appropriation bill is reported back from conference in disagreement, a motion to concur in the Senate amendment with a further amendment is in order, even if the proposed amendment adds legislation to that contained in the Senate amendment, and the only test is whether the proposed amendment is germane to the Senate amendment reported in disagreement. *Manual* §§ 829, 842g. See also Deschler Ch 26 § 6.5.

§ 71. Authority of Conference Managers

Generally

Under Rule XX clause 2, the managers on the part of the House may not agree to any Senate amendment to a general appropriation bill if that

amendment, had it originated in the House, would have been in violation of Rule XXI clause 2, unless such agreement is specifically authorized by separate vote prior thereto. Since the addition of Rule XXI clauses 2(c) and (d) in 1983, this restriction on House managers' authority has been interpreted to extend to Senate amendments in the form of limitations since limitation amendments are in violation of that clause unless offered at the end of reading for amendment in Committee of the Whole. It has been the practice of the managers at a conference on a general appropriation bill to bring Senate amendments containing limitations back to the House in technical disagreement. The House may then dispose of them by proper motion, the stage of disagreement having been reached.

The applicable rule also precludes House managers from agreeing in conference to Senate appropriation amendments on any bill other than a general appropriation bill unless authorized by separate vote. Rule XX clause 2. *Manual* § 829. Under this rule, where a House legislative measure has been committed to conference, and the conferees agree to a Senate amendment appropriating funds, the conference report thereon may be ruled out. Deschler Ch 25 §§ 13.8, 13.9. But a point of order against an appropriation in a conference report on a legislative bill will lie under the rule only if that provision was originally contained in a Senate amendment, and will not lie against a provision permitted by the House to remain in its bill. Deschler Ch 25 § 13.12. Moreover, since the rule applies only to Senate amendments which are sent to conference, it does not apply to appropriations contained in Senate legislative bills. Deschler Ch 25 § 13.11. Generally, see CONFERENCES BETWEEN THE HOUSES.

Authorization by Special Rule

The managers on the part of the House may be authorized by special rule reported by the Committee on Rules to agree to Senate amendments carrying appropriations in violation of Rule XXI clause 2. 7 Cannon § 1577. Where the special rule waives points of order against portions of an appropriation bill which are unauthorized by law, and the bill passes the House with those provisions included, and the bill goes to conference, the conferees may report back their agreement to those provisions even though they remain unauthorized, since the waiver carries over to the consideration of the same provisions when the conference report is before the House. *Manual* § 829 (note).

Authorization by Unanimous Consent

A Member may seek unanimous consent to send an appropriation bill to conference and authorize the House conferees to agree to Senate legisla-

tive amendments notwithstanding the restrictions contained in Rule XX clause 2. Deschler Ch 26 § 6.3. But unanimous consent merely to take from the Speaker's table and send to conference a bill with Senate amendments does not waive the provisions of the rule restricting the House conferees' authority. 7 Cannon § 1574.

VII. Nonprivileged Appropriation Measures

§ 72. In General; Continuing Appropriations

A continuing appropriations measure is legislation enacted by the Congress to provide budget authority for specific ongoing federal programs when a regular appropriation for those programs has not been enacted. See Deschler Ch 25 § 7.1.

Joint resolutions continuing appropriations pending enactment of general appropriation bills for the ensuing fiscal year are not ''general'' appropriation bills and therefore are not reported or called up as privileged (8 Cannon § 2282) unless reported after September 15 preceding the beginning of such fiscal year. Rule XI clause 4(a); *Manual* § 726; Deschler Ch 25 § 7. Calling up by unanimous consent or under a special rule, see § 75, infra.

A continuing resolution is not a ''general appropriation bill'' within the meaning of clause 2 Rule XXI and is therefore not subject to its provisions. The restrictions against unauthorized items or legislation in a general appropriation bill or amendment thereto are not applicable to a continuing resolution despite inclusion of diverse appropriations which are not ''continuing'' in nature. 94–1, June 17, 1975, p 19176; Deschler Ch 26 § 1.2.

§ 73. Supplemental Appropriations

A supplemental appropriation provides budget authority in addition to regular or continuing appropriations already made. Bills making supplemental appropriations for diverse agencies are considered general appropriation bills and are reported as such. Deschler Ch 25 § 7.

A waiver of points of order against a supplemental appropriation bill may be provided for by special rule from the Committee on Rules. The rule may waive points of order against the entire bill (Deschler Ch 25 § 9.7) or against a specific paragraph in the bill (Deschler Ch 25 § 9.6). Such a rule has been considered and agreed to by the House even after general debate on the bill has been concluded and reading for amendment has begun in the Committee of the Whole. Deschler Ch 25 § 9.1.

§ 74. Appropriations for a Single Agency

A measure making an appropriation for a single department or agency is not a ''general'' appropriation bill within the meaning of Rule XI clause 4(a) and is therefore not privileged for consideration when reported by the Committee on Appropriations. Deschler Ch 25 §§ 7.3, 7.4; 89–1, May 5, 1965, p 9518. Moreover, because such measures are not general appropriation bills, they are not subject to points of order under Rule XXI clause 2. 95–1, Feb. 3, 1977, p 3473.

§ 75. Consideration

By Special Rule, Consent, or Suspension

The consideration of nonprivileged appropriation measures may be made in order by a special rule from the Committee on Rules. Deschler Ch 25 § 7.3. The consideration of such measures may also be made in order by unanimous consent. 97–2, Mar. 23, 1982, p 5012; 98–2, Oct. 1, 1984, pp 27961, 27962. Thus, a joint resolution continuing appropriations for a fiscal year may be called up unanimous consent, even where such joint resolution has been reported pursuant to the rule (*Manual* § 743) relating to the filing of nonprivileged reports. Deschler Ch 25 § 8.8.

A nonprivileged appropriation bill may also be considered pursuant to a motion to suspend the rules. Deschler Ch 25 § 13.18.

Consideration in House As In Committee of the Whole

Joint resolutions continuing appropriations pending enactment of regular annual appropriation measures are often considered in the House *as in* Committee of the Whole, but are sometimes considered in Committee of the Whole to permit more extensive general debate. Deschler Ch 25 § 6 (note). Joint resolutions providing supplemental appropriations may also be considered in the House *as in* Committee of the Whole. Deschler Ch 25 §§ 11.5, 11.6. Such consideration may be provided for by unanimous consent (Deschler Ch 25 § 8.7) or pursuant to a special rule from the Committee on Rules (Deschler Ch 25 § 8.4).

Consideration in House

Under modern practice, continuing appropriation joint resolutions are often considered by unanimous consent or by special rule ''in the House'' under the hour rule (Deschler Ch 25 §§ 8.9–8.12), and often with the previous question considered as ordered to prevent amendment. See 102–1, Sept. 24, 1991, p ____.

VIII. Appropriations in Legislative Bills

§ 76. In General

Generally

Restrictions against the inclusion of appropriations in legislative bills are provided for by House Rule XXI clause 5(a). A bill or joint resolution carrying appropriations may not be reported by a committee not having jurisdiction to report appropriations. The rule also prohibits amendments proposing appropriations on a reported legislative bill. *Manual* § 846a. Under this rule, a provision appropriating funds that is included in a bill reported by a legislative committee is subject to a point of order. 7 Cannon § 2133; Deschler Ch 25 § 4.24. But since the rule by its terms applies to appropriations ''reported'' by legislative committees, the point of order does not apply to an appropriation in a bill which has been taken away from a nonappropriating committee by a motion to discharge. 7 Cannon § 1019a. Nor does it apply to a special order reported from the Committee on Rules ''self-executing'' the adoption to a bill of an amendment containing an appropriation, since the amendment is not separately before the House during consideration of the special order. 103–1, Feb. 24, 1993, p ____.

Application to Senate Bills or Amendments Between the Houses

The rule forbidding consideration of items carrying appropriations in bills reported by nonappropriating committees applies to Senate bills as well as to House bills. 7 Cannon §§ 2136, 2147. The point of order may be made against an appropriation in a Senate bill under consideration (in lieu of a reported House bill) even though the bill has not been reported by a committee of the House. 7 Cannon § 2137. This rule also applies to an amendment proposed to a Senate amendment to a House bill not reported from the Committee on Appropriations. 96–2, Oct. 1, 1980, pp 28638–42.

Application to Private Bills

Rule XXI clause 5(a) does not apply to private bills since the committees having jurisdiction of bills for the payment of private claims may report bills making appropriations within the limits of their jurisdiction. 7 Cannon § 2135.

§ 77. What Constitutes an Appropriation in a Legislative Bill

Generally

As used in Rule XXI clause 5(a), an ''appropriation'' means taking money out of the Treasury by appropriate legislative language for the sup-

port of the general functions of government. Deschler Ch 25 § 4.43. Rulings on points of order under clause 5(a) have frequently depended on whether language allegedly making an appropriation was in fact merely language authorizing an appropriation. Deschler Ch 25 § 4. Thus, a provision that disbursements ''shall be paid from the appropriation made to the department for that purpose'' was construed as an authorization merely and not an appropriation, and therefore not subject to a point of order under clause 5(a). 7 Cannon § 2156.

Provisions Held In Order

Provisions in a legislative bill which have held not to violate clause 5(a) have included:

- Language authorizing an appropriation of not less than a certain amount for a specified purpose. Deschler Ch 25 § 4.34.
- Language providing that an appropriation when made should come out of any unexpended balances heretofore appropriated or made available for emergency purposes. Deschler Ch 25 § 4.35.
- Language in a bill providing that all funds ''available'' for carrying out the act ''shall be available'' for allotment to certain bureaus and offices, no use of existing funds being permitted. Deschler Ch 25 § 4.36.
- Language authorizing and directing an executive officer to advance, when appropriated, sums of money out of the Treasury. Deschler Ch 25 § 4.38.
- An authorization for the withdrawal of money from the Treasury belonging to a governmental agency, even though it would otherwise eventually revert to the government. 7 Cannon § 2158.
- Language in a housing bill authorizing the Secretary of the Treasury to use proceeds of public-debt issues for the purpose of making loans. Deschler Ch 25 § 4.43.

Provisions Held Out of Order

Provisions reported by a legislative committee and ruled out of order as constituting an appropriation in violation of Rule XXI clause 5(a) have included:

- A direction that funds previously appropriated be used for a purpose not specified in the original appropriation. 7 Cannon § 2147.
- Language reappropriating or diverting an appropriation for a new purpose. 7 Cannon § 2146; Deschler Ch 25 §§ 4.1, 4.4.
- An amendment requiring the diversion of previously appropriated funds in lieu of the enactment of new budget authority. 100–2, Aug. 10, 1988, p 21719.
- Language providing for the transfer of unexpended balances of appropriations and making such funds available for expenditure. Deschler Ch 25 § 4.5.

- Language making available an appropriation or a portion of an appropriation already made for one purpose to another (100–2, Aug. 10, 1988, p 21719), or for one fiscal year to another (102–2, Mar. 26, 1992, p ____).
- Language providing for the collection of certain fees and authorizing the use of the fees so collected for the purchase of certain installations. Deschler Ch 25 § 4.16.
- An amendment establishing a user charge and making the revenues collected therefrom available without further appropriation. Deschler Ch 25 § 4.19.
- A provision making available for administrative purposes money repaid from advances and loans. Deschler Ch 25 § 4.21.
- Language directing disbursements from Indian trust funds. 7 Cannon § 2149.
- An amendment permitting the acquisition of buses with funds from the highway trust fund. 92–2, Oct. 5, 1972, p 34115.
- A provision establishing a special fund, to be available with other funds appropriated, for the purpose of paying of refunds. 7 Cannon § 2152.
- Language making excess foreign currencies available to stimulate private enterprise abroad. Deschler Ch 25 § 4.22.
- Language providing that the cost of certain surveys would be paid from the appropriation theretofore or thereafter made for such purposes. Deschler Ch 25 § 4.10.
- Language in a bill making available unobligated balances of appropriations ''heretofore'' made to carry out the provisions of the bill. Deschler Ch 25 § 4.11.
- An amendment to a legislative bill waiving provisions in an appropriation act which limited the availability of funds appropriated therein for a specified purpose, thereby increasing the availability of appropriated funds. 93–2, Apr. 4, 1974, pp 9846, 9847.
- An amendment which provided for the transfer of existing federal funds into a new Treasury trust fund and for their immediate availability for a new purpose. 93–2, June 20, 1974, pp 20273–75.
- Language authorizing the Treasurer to honor requisitions of the Archivist in such manner and in accordance with such regulations as the Treasurer might prescribe. Deschler Ch 25 § 4.15.
- A provision in an omnibus reconciliation bill reported by the Budget Committee making a direct appropriation to carry out a part of the Energy Security Act. 99–1, Oct. 24, 1985, p 28812.

§ 78. Points of Order; Timeliness

Generally

A point of order under clause 5 Rule XXI against an appropriation in a bill reported by a legislative committee should be raised at the appropriate time in Committee of the Whole and does not lie in the House prior to consideration of the bill. 94–1, Sept. 10, 1975, pp 28270, 28271. The provision

in clause 5, that a point of order against the appropriation can be made ''at any time'' has been interpreted to require the point of order to be raised during the pendency of the amendment under the five-minute rule. Deschler Ch 25 § 12.14. Such a point of order comes too late after the amendment has been agreed to and has become part of the text of the bill, and cannot then be raised against further consideration of the bill as amended. 94–1, Apr. 28, 1975, p 12049.

A point of order under clause 5 applies to the appropriation against which it is directed and not to the bill carrying it. A point of order in the House that the bill is improperly on the Union Calendar does not lie. 7 Cannon § 2140. The point of order should be directed to the item of appropriation in the bill at the proper time and not, in the House, to the act of reporting the bill. 7 Cannon § 2142. It follows that motions to discharge nonappropriating committees from consideration of bills carrying appropriations are not subject to points of order under the rule. 7 Cannon § 2144.

The intervention of debate or the consideration of amendments following the reading do not preclude points of order under clause 5. Points of order against appropriations in legislative bills may be raised even after debate has taken place on the merits of the proposition. Deschler Ch 25 § 12.15. A point of order against an amendment to a legislative bill containing an appropriation can be raised ''at any time'' during its pendency, even in its amended form, though the point of order is against the amendment as amended by a substitute and though no point of order was directed against the substitute prior to its adoption. 94–1, Apr. 23, 1975, pp 11512, 11513.

Waiving Points of Order

Points of order based on clause 5 have sometimes been waived by resolution. Deschler Ch 25 § 4.3. Where the House has adopted a resolution waiving points of order against certain appropriations in a legislative bill, a point of order may nevertheless be raised against an amendment to the bill containing an identical provision. 94–1, Apr. 23, 1975, p 11512.

§ 79. — Directing Points of Order Against Objectionable Language

A point of order under Rule XXI clause 5 against an appropriation in a legislative bill should be directed against that portion of the bill (or against the amendment thereto) in which the appropriation is contained and cannot be directed against the consideration of the entire bill. 7 Cannon § 2142; Deschler Ch 25 § 4.2. If such a point of order is sustained with respect to

a portion of a section of a legislative bill containing an appropriation, only that portion is stricken. But if the point of order is directed against the entire section for inclusion of that language, the entire section will be ruled out. 93–2, Apr. 4, 1974, pp 9845, 9846.

Assembly of Congress

Research References
1 Hinds §§ 1–10; 5 Hinds §§ 6758–6762
6 Cannon §§ 1–5
1 Deschler Ch 1
Manual § 245

§ 1. In General; Day of Convening

Generally

The Constitution provides that each regular session of Congress shall begin on January 3 unless Congress by law appoints a different day. U.S. Const. amend. XX, § 2. A joint resolution, which has not been considered privileged, is used to provide for the convening of a Congress on a day other than that specified by the Constitution. 94–2, Oct. 1, 1976, p 35130. See also H.J. Res. 377, providing for the convening of the 97th Congress, second session, on Jan. 25, 1982, rather than on Jan. 3, 1982. For other laws appointing a different day for assembling, see *Manual* § 243. The joint resolution may originate either in the House (95–1, Dec. 15, 1977, p 38948) or in the Senate (93–1, Dec. 17, 1973, p 42059).

The President has the constitutional authority to convene the Congress earlier than on the day it has fixed for its reconvening. He may exercise this authority on ''extraordinary occasions'' by convening either or both Houses. U.S. Const. art. II, § 3. A number of early Congresses were convened by Presidential proclamation (1 Hinds §§ 10, 12). The last session so convened was in the 76th Congress.

Pro Forma Meetings

Upon completion of the legislative business for a session, the House may schedule pro forma meetings for the remainder of the constitutional term. 96–1, Dec. 14, 1979, p 36200. For example, as the first session of

the 96th Congress drew to a close, the House, by unanimous consent, agreed to convene every third day for the remainder of the session, including a final pro forma meeting immediately prior to the constitutional expiration of the session at noon on Jan. 3, 1980. 96–1, Dec. 20, 1979, p 37317. Similarly, in the 102d Congress, pursuant to the concurrent resolution that placed the two Houses in an intrasession adjournment from November 27, 1991, until January 3, 1992, the House convened at 11:55 a.m. on that day for its final meeting of the first session. Because section 2 of the 20th Amendment requires the Congress to assemble at noon on January 3 of each year unless another date is set by law, when the Speaker announced adoption of a simple motion to adjourn on the last day of the first session at two minutes before that time he declared the House adjourned *sine die* so that the second session could be convened at noon. 102–2, Jan. 3, 1992, p ____.

Alternatively, the House may recess pursuant to a rule reported from the Committee on Rules at the end of a session for periods not in excess of three days, 104–1, Dec. 21, 1995, p ____.

§ 2. Hour of Meeting

Generally; Hourly Schedules

Each House has plenary power over the time of its meetings during the session. If the time of meeting has not been previously set by resolution, the House, by standing order having the force of the common law, meets each day at noon. Deschler Ch 1 § 3. However, it is the customary practice of the House to adopt a resolution establishing an hourly schedule for its daily meetings. 88–2, Jan. 7, 1964, p 5; 92–1, Jan. 21, 1971, p 15; 97–2, Jan. 25, 1982, p 62. In the 104th Congress, for example, the House adopted a resolution (Jan. 4, 1995, H. Res. 8) establishing as a standing order the daily hours of meeting.

Such schedules are designed to provide sufficient committee time for hearings and markups early in the session, and sufficient floor time later for authorization and appropriation bills. Resolutions setting daily meeting times are considered privileged even though they are not reported from the Committee on Rules since they are essential to the operation of the House where there is no standing order in place. 97–2, Jan. 25, 1982, p 62. But subsequent resolutions changing the hour of meeting, unless reported as privileged from the Committee on Rules, require unanimous consent for consideration. See, for example, 95–2, June 29, 1978, p 19507.

The meeting hour may be subsequently changed to a different hour on certain days of the week pursuant to the adoption of a resolution setting forth the new convening time. 95–1, June 30, 1977, p 21685. And the House

may by unanimous consent vacate a previous order providing for the House to meet only at certain times for the remainder of the session, and agree to meet at a different time. 95–1, Nov. 29, 1977, p 38003.

Adjournments to a Different Hour

The motion that when the House adjourns it adjourn to a day and time certain may be used to enable the House to meet at an hour different from that provided by the standing order. For a general discussion of this motion (which is a privileged motion at the Speaker's discretion) see ADJOURNMENT. In addition, the House may agree by unanimous consent to meet at an earlier hour on the following day rather than at noon. 88–1, Dec. 23, 1963, p 25499; 90–2, Sept. 11, 1968, p 26488. And if the time of meeting has not been previously set, the House may agree to a motion to adjourn which fixes the hour of the next meeting (5 Hinds §§ 5362, 5363).

§ 3. Organizational Business—First Session

Functions of the Clerk

At the beginning of a new Congress, under the modern practice (see 103–1, Jan. 5, 1993, p ____), the Clerk elected in the prior Congress calls the House to order. In the event of his absence or incapacity, the Sergeant at Arms from the prior Congress calls the House to order. 98–1, Jan. 3, 1983, p 29. After the opening prayer and Pledge of Allegiance, he:

- Announces the receipt of credentials of Members-elect.
- Causes a quorum to be established, by roll call by states, by electronic device.
- Announces the filing of credentials of Delegates-elect and of the Resident Commissioner.
- Recognizes for nominations for Speaker.
- Appoints tellers for the alphabetical roll call vote by surname for Speaker.
- Announces the vote.
- Appoints a committee to escort the Speaker to the Chair.

Election of Speaker

The election of the Speaker is ordinarily the first order of business at the opening of a new Congress after the ascertainment of a quorum. Candidates for the office are nominated by the chairmen of the Democratic Caucus and the Republican Conference. See, for example, 103–1, Jan. 5, 1993, p ____. The Speaker may be chosen by a viva voce vote on a roll call with tellers, the Members responding with the name of the nominee of their choice when called on the roll. Deschler Ch 1 § 6. Although the Clerk ap-

points tellers for the election (87–2, Jan. 10, 1962, p 5) the House and not the Clerk determines what method of voting to use. Deschler Ch 1 § 6.

Status and Rights of Members-elect

Where the certificate of election of a Member-elect, in due form, is on file with the Clerk, he is entitled as of right to be included on the Clerk's roll. *Page* v *United States* (1888) 127 US 67. Those Members whose names appear on the Clerk's roll are entitled to vote for a new Speaker at the beginning of a Congress and to participate in other organizational business prior to the administration of the oath. They may debate propositions, propose motions, offer resolutions, and make points of order (Deschler Ch 2 § 2); and they may be named to serve on House committees when sworn. 4 Hinds §§ 4477, 4483, 4484. They may not introduce bills until after they have been sworn. *Manual* § 300.

All Members-elect whose credentials have been received by the Clerk are included on the first roll call, on opening day, to establish a quorum. Members-elect not responding on that call and not appearing to take the oath when it is administered *en masse* on opening day are not included on further roll calls until they have taken the oath. Generally, see OATHS.

Notices and Messages

At the beginning of a new Congress, the House by various resolutions: (1) directs that a message be sent to the Senate to inform that body that a quorum of the House has been established and that the Speaker and Clerk have been elected; (2) establishes a select committee to notify the President that a quorum of the House has assembled and is ready to receive any communication he may wish to make; and (3) directs the Clerk to inform the President of the selection of Speaker. See 94–1, Jan. 14, 1975, pp 15–19; 103–1, Jan. 5, 1993, p ____.

§ 4. Organizational Business—Second Session

At the beginning of a second session of a Congress, the House is ordinarily called to order by the Speaker, although in his absence the House may be called to order by the Clerk (87–2, Jan. 10, 1962, p 5) or by a previously designated Speaker pro tempore (89–2, Jan. 10, 1966, p 5). Following the opening prayer, the Speaker orders, without motion, a call of the House to establish a quorum. 98–2, Jan. 23, 1984, p 74. The call of the House may be taken by electronic device (102–2, Jan. 24, 1992, p ____), but the Speaker may elect not to use the electronic system for that purpose. 94–2, Jan. 19, 1976, p 140.

Members-elect, elected to fill vacancies occurring in the first session, are not included on the roll call to ascertain the presence of a quorum when the second session convenes; their names are included on the roll only after their certificates of election have been laid before the House and the oath administered to them. Similarly, the names of those Members who resigned during adjournment are stricken from the roll and are not called to establish a quorum. 87–2, Jan. 10, 1962, p 5.

§ 5. Adoption of Rules

The Constitution gives each House the power to determine the rules of its proceedings. U.S. Const. art. I § 5 clause 2. The Supreme Court has interpreted this clause to mean that the House possesses nearly absolute power to adopt its own procedural rules. *United States* v *Ballin* (1892) 144 US 5. This power cannot be restricted by the rules or statutory enactments of a preceding House. Deschler Ch 1 § 10.1. Thus, the adoption of the three-day availability rule by the 91st Congress did not bind the 92d Congress. 92–1, Jan. 22, 1971, p 132.

The rules of the House for each Congress are adopted by resolution. See, for example, 89–1, Jan. 4, 1965, pp 21–25; 90–1, Jan. 12, 1967, p 430. Ordinarily, the House adopts the rules of the prior Congress but with various amendments. 5 Hinds § 6742; 103–1, Jan. 5, 1993, p ____. A resolution adopting rules is subject to amendment when the previous question is voted down (90–1, Jan. 10, 1967, pp 31–33) or by the minority in a motion to recommit with instructions. Such a resolution is not subject to a demand for a division of the question or for a separate vote on each rule (Deschler Ch 1 § 10.8) absent prior adoption of a special rule permitting a divison of the resolution (104–1, Jan. 4, 1995, p ____).

As with other House-passed measures, the House may by unanimous consent direct the Clerk, in the engrossment of a House resolution providing for the adoption of rules, to make certain technical corrections in the text of the resolution. 90–1, Jan. 12, 1967, p 430.

§ 6. Procedure Prior to Adopting Rules

Prior to the adoption of formal rules, the House operates under general parliamentary law, as modified by certain traditional House rules and practices, and by portions of Jefferson's Manual. 5 Hinds §§ 6761–6763; 8 Cannon § 3386. Statutes incorporated into the rules of the prior Congress do not control the proceedings of the new House. 92–1, Jan. 22, 1971, p 132. They must be re-adopted as part of the rules of the new House in the resolution adopting those rules.

Prior to the adoption of rules by the House, those rules which embody practices of long-established custom will be enforced as if already in effect. 6 Cannon § 191. Thus, prior to adoption of the rules, the Speaker may maintain decorum by directing a Member who has not been recognized in debate beyond an allotted time to be removed from the well, and by directing the Sergeant at Arms to present the mace as the traditional symbol of order. 102–1, Jan. 3, 1991, p ____.

Procedures common to general parliamentary law applicable in the House prior to the adoption of its formal rules include:

- The motion for a call of the House. 4 Hinds § 2981; Deschler Ch 1 § 9.
- Points of order of no quorum. 96–1, Jan. 15, 1979, p 10.
- The motion to refer, subject to the motion to table. 103–1, Jan. 5, 1993, p ____.
- Demands for the yeas and nays. 5 Hinds §§ 6012, 6013; Deschler Ch 1 § 9.
- The motion for the previous question (5 Hinds §§ 5451–5455; 90–1, Jan. 10, 1967, p 14), which takes precedence over a motion to amend. 91–1, Jan. 3, 1969, pp 25–27.
- The motion to amend after rejection of the previous question (90–1, Jan. 10, 1967, p 14; 87–1, Jan. 3, 1961, pp 23–25), with any amendment being subject to the point of order that it must be germane. 91–1, Jan. 3, 1969, pp 23–25.
- The practice that Members may engage in debate only when recognized, such recognition being at the discretion of the Speaker. 102–1, Jan. 3, 1991, p ____.
- The hour rule for debate on a question. 92–1, Jan. 22, 1971, p 132.
- Losing the right to resume after yielding the floor. 5 Hinds §§ 5038–5040.
- Recognition for an amendment after the defeat of the previous question, under the hour rule, with the proponent of the amendment controlling the time. 91–1, Jan. 3, 1969, pp 27–29.
- The motion to commit after ordering of the previous question. 5 Hinds § 6758; 97–1, Jan. 5, 1981, p 112; 98–1, Jan. 3, 1983, p 50.
- Withdrawal of a resolution before action is taken thereon. 92–1, Jan. 21, 1971, p 13.
- The motion to lay on the table. 5 Hinds § 5390; Deschler Ch 1 § 9.
- The motion to postpone to a day certain. 92–1, Jan. 21, 1971, p 14.
- The motion to adjourn. 1 Hinds § 89; Deschler Ch 1 § 9.

Specific standing rules of the House held *not* applicable prior to adoption of its formal rules include:

- The rule permitting 40 minutes of debate after the moving of the previous question on a matter on which there has been no debate. 5 Hinds § 5509; 87–1, Jan. 3, 1961, p 23.
- The three-day availability rule for the consideration of committee reports. 92–1, Jan. 22, 1971, p 132.

§ 7. Taking Up Legislative Business

Generally

Congress is not assembled until both the House and Senate are in session with a quorum present. 6 Cannon § 5. But once the two Houses have assembled, elected officers, sworn Members, and adopted rules, the resumption of legislative business is in order. See 1 Hinds §§ 130, 140, 237; Deschler Ch 1 § 11. In rare instances, a major bill has been considered and passed even before the completion of organization by the adoption of rules. Deschler Ch 1 § 12.8. However, a bill will not be considered in the House before the administration of the oath to Members-elect, because of the statutory requirement that the oath precede the consideration of general business. 2 USC § 25. And, as a matter of long-established custom, the two Houses usually do not begin transacting legislative business at the beginning of a Congress until after the President has delivered his state of the Union Message. See 1 Hinds §§ 81, 122–125; Deschler Ch 1 § 11. On one recent occasion the House as part of the resolution adopting its standing rules also adopted a special order providing for the immediate consideration of a bill introduced that day (104–1, Jan. 4, 1995, p ____). On occasion the House has convened for its second session on Jan. 3 but then conducted no legislative business (including approval of its Journal or referral of bills) for several days. 96–2, Jan. 22, 1980, p 187; 102–2, Jan. 22, 1992, p ____.

Old Business

Upon convening for a second or third session during the term of a Congress, the House resumes all business that was pending either before the House or before committees at the adjournment *sine die* of the preceding session. 5 Hinds § 6727; *Manual* § 901. Similarly, conference business between the two Houses continues over an adjournment between the first and second sessions of a Congress. 5 Hinds §§ 6760–6762. However, since Congress does not allow the past proceedings of one Congress to bind its successor, business remaining at the end of one Congress does not carry over to the beginning of a new Congress. Deschler Ch 1 § 11.

Bills may be placed in the hopper on opening day and are referred as expeditiously as possible following adoption of the rules (94–1, Jan. 14, 1975, p 34); however, due to the large number of bills introduced on opening day, the Speaker may delay their referral but with all referrals ultimately printed as being made on opening day. 86–1, Jan. 7, 1959, p 161.

Bills and Resolutions

A. GENERALLY; PUBLIC BILLS

B. PRIVATE BILLS

Research References

4 Hinds §§ 3266–3297, 3364–3390
7 Cannon §§ 846–871, 1027–1053
Deschler Ch 24 §§ 1–4, 9, 10
Manual §§ 397, 414, 478, 849a, 852

A. Generally; Public Bills

§ 1. In General; Resolutions Distinguished

Bills are used for purposes of general legislation. Joint resolutions are used to propose constitutional amendments and for special or subordinate legislative purposes. Simple or concurrent resolutions are used primarily to regulate the administrative or internal business of the House, to express facts or opinions, or to dispose of some other nonlegislative matter. See Deschler Ch 24 §§ 1 *et seq*. However, unlike simple or concurrent resolutions, a joint resolution is a bill so far as the rules of the House are concerned. 4 Hinds § 3375.

The introduction of certain types of bills is prohibited by House rule. The introduction of private bills to pay claims cognizable under the Federal Tort Claims Act, or providing for the construction of a bridge across a navigable stream or for the correction of a military record, have been prohibited since 1946. See § 10, infra. As of the 104th Congress, the introduction of commemorative bills or resolutions is barred by Rule XXII clause 2(b).

The various stages in the passage and enactment of a bill, including its introduction and referral, reading, engrossment, and enrollment, are treated elsewhere. See READING, PASSAGE, AND ENACTMENT. See also CONSIDERATION AND DEBATE; VOTING; and VETO OF BILLS.

§ 2. Public and Private Bills Distinguished

Bills may be either public or private. A private bill is a bill for the benefit of one or several specified persons or entities, and is to be distinguished from a public bill, which relates to public matters and deals with individuals by classes only. 3 Hinds § 2614; 4 Hinds § 3285; 7 Cannon § 856; Deschler Ch 24 § 1. Whether a law is to be regarded as public or private depends on the attendant circumstances, having regard to the effect rather than the form of the legislation. *Bollinger* v *Watson*, 63 SW 2d 642, 187 Ark. 1044. The distinction is important, because the procedures followed in the enactment of private bills (see § 8, infra) are significantly different from those applicable to public bills.

A bill may be regarded as a public bill and referred to the House or Union Calendar when reported where it:

- Contains provisions applicable to the general public, although benefiting a named individual. 4 Hinds § 3286.
- Relates to a nation of Indians and not to Indians as individuals. 7 Cannon § 870; Deschler Ch 24 § 3.3.
- Indemnifies a foreign government for injury to one of its nationals. 7 Cannon § 865; Deschler Ch 24 § 3.2.
- Includes among provisions for the relief of private persons one item to pay a claim of a foreign nation. 4 Hinds § 3287.
- Grants an easement over public lands to a private company. 7 Cannon § 864.
- Authorizes an exchange of government-owned land for privately owned land. 7 Cannon § 862.
- Provides for the reimbursement of ''all the depositors'' of a certain bank, the depositors not being identified by name. 8 Cannon § 2373.
- Makes certain veterans entitled to wartime disability compensation for disabilities and diseases caused by or attributable to exposure to atomic or nuclear radiation during their period of active service. 96–2, Oct. 9, 1980, H. Jour. p 2193.

§ 3. Form; Component Parts

Generally

The form in which bills are considered in the House is governed by statute and by the practices and customs of the House. Any deviation from the form so prescribed may be authorized by joint resolution or be waived by passage under suspension of the rules. 7 Cannon § 1035. Alleged errors in the drafting of a bill are to be resolved by the House in its consideration of the measure and not by the Speaker on a point of order. Deschler Ch 24 § 2.2.

Although there is no mandatory uniform style that is to be followed in the drafting of legislative measures, general guidelines are available. See HOUSE LEGISLATIVE COUNSEL'S MANUAL ON DRAFTING STYLE, Nov. 1995.

The component parts of a bill introduced in the House include:

- A bill title (an identifying bill number is subsequently added thereto).
- A preamble—used only on joint resolutions, rarely on bills (§ 5, infra).
- An enacting or resolving clause, which must appear in the first section of the act (1 USC § 103).
- The text of the bill.

On rare occasions, an act may contain an illustration, as where it shows a required warning label (99–2, Feb. 3, 1986, p 1326). And one House may pass a bill with blanks to be filled in by the other House. 5 Hinds § 5781. But it is not in order for a Member to have distributed on the floor of the House copies of a bill marked with his own interpretation of its provisions. Deschler Ch 24 § 2.1.

Enacting Clauses

Enacting clauses must be in the form prescribed therefor by the United States Code, as follows:

> *Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled.* 1 USC § 101.

Resolving Clauses

The form prescribed for the resolving clause of a joint resolution is:

> *Resolved by the Senate and House of Representatives of the United States of America in Congress assembled.* 1 USC § 102.

If the joint resolution proposes to amend the Constitution, it is customary to add to the resolving clause the words ''two-thirds of both Houses concurring.'' 4 Hinds § 3367.

Sections; Headings and Subheadings

The United States Code requires that each section of a bill be numbered, and that it ''contain, as nearly as may be, a single proposition of enactment.'' 1 USC § 104. Section headings and subheadings may be used, and in cases of ambiguity it is proper to consult both a section heading and the section's content in order to ascertain the clear meaning of the legislation. *House* v *C.I.R., C.A. Tex.,* 453 F2d 982 (1972).

Page and Line Numbers

Under the practices of the House, when a bill is reported, each page of the text is numbered and each line in the text is given a separate number in the margin so that reference may quickly be made to specific provisions of the bill. However, the pagination and marginal numerals are no part of the text of the bill, and after amendment they may be altered, changed, or transposed by the Clerk to conform to the amended text without the necessity of a House order. 5 Hinds § 5781; 8 Cannon § 2876.

§ 4. Titles

All bills are given a title that indicates the subject matter of the bill. A title is used strictly for purposes of identification (Deschler Ch 24 § 9.1) and is not considered in passing on points of order relating to the provisions of the bill. 7 Cannon § 1489.

Under the guidelines suggested by the Office of the Legislative Counsel, a title should accurately and briefly describe what a bill does. For bills amending primarily a particular law, the form ''To amend [citation of law] to . . .'' is used. For constitutional amendments, the form ''Proposing an amendment to the Constitution of the United States concerning . . .'' is used. If the bill covers multiple items, the phrase ''and for other purposes'' may be used at the end of the title.

Although the title is retained on the bill during the various stages of enactment, including engrossment (*Manual* § 431) it is not considered to be part of the enacted statute and is generally published only in the *Statutes at Large*. Indeed, when an enacted statute is codified and included in the United States Code, its title may be excluded or greatly abbreviated.

A title cannot be used to negate the obvious meaning of the statute, but may, as part of the legislative history, assist in resolving ambiguities. 4 Hinds § 3381. In such cases the title of an act may be resorted to by courts as an aid in determining legislative intent. *Brotherhood of R.R. Trainmen* v *Baltimore and Ohio Railroad Co.,* 67 S.Ct. 1387, 331 U.S. 519, 91 L.Ed. 1646. In this context, the title of a bill at the time of its enactment is said

to be indicative of the true intention of Congress in enacting it. Corpus Juris Secundum, Statutes § 351.

§ 5. Preambles

Preambles often appear in joint resolutions, but rarely in bills where sections containing separate statements of findings may serve the same purpose. 4 Hinds § 3412. Preambles are sometimes used to indicate the underlying reason for a measure. 4 Hinds § 3413. However, preambles are not used in joint resolutions where the purpose of the measure is largely self-explanatory, as where it:

- Makes continuing appropriations for a fiscal year. Pub. L. No. 99–103, 99th Cong.
- Makes an urgent supplemental appropriation for an executive department. Pub. L. No. 99–71, 99th Cong.
- Extends certain programs which would otherwise expire. Pub. L. No. 99–120, 99th Cong.

The House may delete the preamble from a measure it has adopted prior to its enactment. This is done either by unanimous consent or pursuant to a motion to strike the preamble. This cannot be done simply by moving to strike all after the enacting or resolving clause since the preamble always precedes that clause. Deschler Ch 24 § 9.5. Preambles to simple resolutions may be disposed of pursuant to a motion to lay on the table, and the adoption of such motion does not affect the status of the resolution. 5 Hinds § 5430. Of course, where no action is taken to strike out the preamble, and the bill is passed, the preamble remains as part of the bill. Deschler Ch 24 § 9.5.

B. Private Bills

§ 6. In General

Background

The practice of Congress in passing private bills for the benefit of specific persons or entities was taken from the English Parliament, and began with the First Congress. The use of private bills steadily increased thereafter, so much so that in some years the Congress enacted more private bills than it did public bills. The 59th Congress, for example, enacted more than 6,000 private bills, while enacting fewer than 700 public bills. 7 Cannon § 1028. In recent years, and especially since the adoption of the Legislative Reorganization Act of 1946, the number of private bills enacted into law has been

steadily declining. In the 103d Congress only 8 bills of this type were approved. Calendars of the U.S. House of Representatives, Final Edition, 103d Cong.

Since it lacks the generality of application that is normally found in public laws, a private bill is considered a legislative anomaly. Congressional action in passing such bills has been based on the rationale that because public laws cannot cover every situation or extraordinary circumstance that might arise, Congress may, as part of its general law-making function, create ''equitable law'' to cover such circumstance. 79 Harv. L. Rev. p 1684.

Constitutionality

Although the constitutionality of private bills has not been subjected to extensive critical analysis by the courts, their use is regarded as a proper legislative function. The Supreme Court in 1940 held that the passage of a private bill does not constitute a congressional intrusion into the judicial function. *Paramino Lumber Company* v *Marshall*, 309 US 370 (1940).

Omnibus Bills

The rules of the House permit the use of ''omnibus'' private legislation—that is, a measure containing two or more private bills that are considered as a single package. See Rule XXIV clause 6 (*Manual* § 893).

§ 7. What Constitutes a Private Bill

A private bill may be generally defined as a bill for the benefit or relief of one or several specified persons or entities. 4 Hinds § 3285; 7 Cannon § 856. It is generally enacted only for those who have no other remedy available to them. Deschler Ch 24 § 3. A bill for the benefit of a named individual is classed as a private bill even though it deals with government property. 7 Cannon § 859. An ''omnibus claim bill'' containing provisions for payments to many different claimants is also treated as a private bill rather than a public bill, where all claimants are of the same class and each claimant is specified by name. 4 Hinds § 3293. In one instance, a bill was regarded as a private bill even though the individuals were not named and were identified only as ''all persons'' who worked on a certain construction project. 7 Cannon § 857.

§ 8. Introduction and Referral; Enactment Procedure

Private bills may be presented to the House only through a sponsoring Member. A Member with a private bill to present (1) endorses his name on the bill, and (2) delivers the bill to the Clerk. Rule XXII (*Manual*

§ 849a). After its delivery to the Clerk, it may be referred to the appropriate committee and then by it to a subcommittee. Committee approval of the bill is generally contingent upon a showing that the applicant has no other remedy. If the bill receives committee approval, it is reported out favorably for consideration and is referred to the Private Calendar.

Private bills called on the Private Calendar are reviewed by a committee of ''official objectors'' consisting of six members—three from each party. As a matter of policy, the official objectors have traditionally required that bills must be on the Private Calendar for seven days before being called up; otherwise, they will object (see PRIVATE CALENDAR). If two or more Members of the House object to a bill, it is returned to the committee that reported it (*Manual* § 893). However, such a bill may be ''passed over without prejudice'' by unanimous consent for subsequent consideration. Also, the provisions of a private bill may be reported back in an omnibus bill. 95–1, Apr. 28, 1977, p 12619.

If the bill is unopposed, it is taken up in the House *as in* Committee of the Whole. The procedure is as follows:

> THE SPEAKER: This is the day for the call of the Private Calendar. The Clerk will call the first omnibus bill on the calendar. . . . The Clerk will read the bill by title for amendment. [*The Clerk reads the bill, and any committee amendments are reported and disposed of; thereafter, motions to amend (see § 9, infra) are in order.*]
>
> MEMBER: Mr. Speaker, I offer a motion [*to strike all or part of the pending paragraph.*]
>
> > *Note:* Amendments are in order only if they strike out or reduce amounts of money or provide limitations. *Manual* § 893. Motions to strike the last word are not permitted, nor are reservations of objection. 95–1, Apr. 28, 1977, p 12619.
>
> THE SPEAKER [*after disposition of amendments*]: The question is on the engrossment and third reading of the bill.
>
> MEMBER: Mr. Speaker, I offer a motion to recommit.
>
> THE SPEAKER [*after disposition of the motion to recommit*]: The question is on the passage of the omnibus bill.

After a private bill has passed both Houses, it is sent to the President, who may sign the bill or veto it just as he may a public bill. A private bill must be approved by the President, or enacted over his veto, in order to become law. See, for example, 83–2, Sept. 15, 1954, p 6748.

After the House passes an omnibus private bill, it is resolved into the various private bills of which it is composed, and each is sent to the Senate as if individually passed. *Manual* § 895.

§ 9. — Amendments

A private bill is subject to amendment under the five-minute rule pursuant to Rule XXIV clause 6. (*Manual* §§ 893, 894.) However, a private bill for the benefit of one individual may not be amended so as to extend its provisions to another individual, even indirectly through a motion to recommit with instructions. 4 Hinds § 3296. Nor is it in order to amend a private bill by adding provisions general and public in character. 4 Hinds § 3292. Motions to strike the last word—pro forma amendments—are not entertained. 90–1, Dec. 14, 1967, p 36536. Because of the germaneness rule (see GERMANENESS OF AMENDMENTS) a private bill for the benefit of certain individuals, ascertainable by name, may not be amended so as to extend its provisions to a general class of individuals. 7 Cannon § 860.

When an amendment is offered, members of the reporting committee have priority in recognition to oppose the amendment. 90–1, Dec. 14, 1967, p 36535.

§ 10. Uses of Private Bills

Generally

Under the modern practice, most private bills granting relief to individuals fall into one of two major categories: (1) bills involving claims *against* the United States or waiving claims *by* the Federal Government against specific individuals, and (2) bills excepting named individuals from certain requirements of the immigration or naturalization laws. See §§ 11, 12, infra.

Some private bills granting relief to identified individuals merely permit the taking of some action that would otherwise be prohibited by general law. For example, one favorably reported private bill authorized federal employees of the Social Security Administration in Syracuse, New York, to transfer annual leave to a fellow employee who had exhausted her sick leave during her treatment for cancer; the coworkers indicated that they wanted to donate their annual leave on her behalf in order to extend her recovery time and allow her to continue to be employed. 100–2, H.R. 3625, H. Rept. No. 100–554. Another such bill authorized the Secretary of Defense to allow the children of a secret service agent killed while on duty to attend school at a United States military facility in Puerto Rico, after the family had been notified that his children were no longer eligible to attend the school due to the fact that the children were no longer dependents of a federally employed person in Puerto Rico. 100–2, H.R. 3439, H. Rept. No. 100–552.

Measures Barred From Consideration

In the Legislative Reorganization Act of 1946, Congress barred the consideration of certain types of private bills. Under this provision, which was added to the House rules in 1953 (see Rule XXII clause 2), the House may not receive for introduction or consider any private bill authorizing or directing the payment of money for property damages, or for personal injuries or death for which suit may be instituted under the Tort Claims Act. Private pension bills (other than those to carry out a provision of law or treaty stipulation) are also barred, as are bills providing for the construction of a bridge across a navigable stream. Private bills providing for the correction of a military record are likewise proscribed (*Manual* § 852) though a private bill which merely changes the computation of retired pay for a former member of the armed services has been held permissible. 98–2, Sept. 18, 1984, p 25824. The barring of private bills in such cases is based on the availability to claimants of other judicial or administrative remedies. Deschler Ch 24 § 3. The Tort Claims Act, for example, provides both administrative and judicial remedies in certain personal injury cases involving the negligence of federal employees. See 28 USC §§ 2671 *et seq.*

§ 11. — Claims By or Against the Government

Generally; Constitutionality

Many private bills that are enacted grant relief to an individual who has a meritorious claim against the federal government which cannot otherwise be remedied. Deschler Ch 24 § 3. The constitutional basis for such bills is found in the First Amendment, which sets forth the right to petition the government for the redress of grievances, and in Article I, which allocates to Congress the power to pay the debts of the United States. U.S. Const. art. I § 8 clause 1. See *Pope* v *United States*, 323 US 1 (1944).

Procedure

Under Rule XXI clause 4 unanimous consent is required for the reference of a private claim bill to a committee other than the Committee on the Judiciary or the Committee on International Relations. *Manual* § 845.

Most private bills involving claims against the government are referred to the Judiciary Committee, which has jurisdiction over such claims under Rule X clause 1(j). This committee then refers the bill to its Subcommittee on Immigration and Claims. The subcommittee may hold a hearing on the matter. The subcommittee determines whether to recommend the bill favorably and then reports to the full committee. If the recommendation is favor-

able, and the full committee agrees therewith, the bill is reported and referred to the Private Calendar. See also § 8, supra.

> *Note:* An alternative to this procedure is provided for in the United States Code. It authorizes either House of Congress, by adopting a resolution, to refer bills (except pension bills) to the Chief Judge of the U.S. Court of Federal Claims, and stipulates that the Chief Judge is to report the findings of fact and conclusions in each case to the House which made the reference. 28 USC §§ 1492, 2509. These reports are provided to Congress for use in deciding whether certain private claims warrant legislative relief. *Zadeh* v *United States*, 111 F Supp 248 (1953).

Granting Relief; Consideration of Particular Claims

In exercising its jurisdiction over claims against the government, and in determining whether relief should be granted to persons seeking redress of grievances under its rules, the subcommittee has been guided by ''principles of equity and justice.'' The task of the subcommittee has been to determine whether the equities and circumstances of a case create a ''moral obligation'' on the part of the government to extend relief to an individual who has no other existing remedy. Relief has been granted in private legislation:

- To provide for the payment of $1.6 million to settle certain property damage claims of residents arising out of the 1973 occupation of Wounded Knee, South Dakota, by members of the American Indian Movement, who had been surrounded by federal forces. 100–2, H.R. 2711, H. Rept. No. 100–559.
- To provide for a payment of $125,000 to a child who had been sexually assaulted and molested by an employee of the Postal Service, who was delivering mail at the time. A civil action against the United States on behalf of the six-year-old claimant was filed under the Federal Tort Claims Act on the basis of negligent supervision of the employee by the Postal Service, but this suit was unsuccessful, intentional torts such as assault being excluded under the provisions of the act. 100–2, H.R. 4099, H. Rept. No. 100–556.
- To authorize certain firefighters to sue the United States for injuries or death under the FTCA, because the Secretary of Labor had determined that the firefighters were federal employees covered by another statute—the Federal Employee Compensation Act (FECA)—which precluded claims under the FTCA. 100–2, H.R. 2682, H. Rept. No. 100–547.
- To waive the discretionary-function and foreign-country exceptions to the FTCA, thereby granting jurisdiction for the claimant to sue the government for claims arising at a U.S. Army health facility in Germany, an improperly administered smallpox vaccination having resulted in long-term hospitalization. 100–2, H.R. 2684, H. Rept. No. 100–442.

- To provide compensatory relief in a contract case based on a moral obligation of the government, such as when money was promised and not paid. See 87–1, Priv. L. No. 87–195, H. Rept. No. 232; 100–2, H.R. 3185, H. Rept. No. 100–549.
- To adjust or credit the account of a federal official (7 Cannon § 863), or reimburse a government employee for expenditures made by him at the direction of his employer. 100–2, H.R. 3388, H. Rept. No. 100–551.
- To permit claimants to receive an annuity under the Civil Service Retirement (CSR) system. 100–2, H.R. 2889, H. Rept. No. 100–548; 100–2, H.R. 1864, H. Rept. No. 100–546.
- To relieve a federal employee of liability for repayment of travel expenses erroneously paid to him by his employer. 100–2, H.R. 3941, H. Rept. No. 100–555; 100–2, H.R. 3347, H. Rept. No. 100–550.
- To suspend or waive a statute of limitations where the government has been unjustly enriched at the expense of the claimant (see 92–1, Priv. L. No. 87–23, H. Rept. No. 87–176), or where to do so would be in the interests of ''justice and equity.'' 100–1, H.R. 1491, H. Rept. No. 100–439.

§ 12. — Immigration and Naturalization Cases

Private bills are sometimes used to exempt individuals from the application of the immigration and naturalization laws in hardship cases where the law would otherwise prohibit entry into or require deportation from the United States. Deschler Ch 24 § 3.

To obtain a private bill granting such relief, the applicant must find a Member willing to sponsor the bill. § 8, supra. When such a bill has been introduced, it is referred to the House Judiciary Committee pursuant to Rule X clause 1(j). The bill may then be referred to the subcommittee with jurisdiction over such bills for consideration and hearings pursuant to specified guidelines. Private bills have been used in specific cases to:

- Restore a prospective immigrant to his place on a quota waiting list when that place was lost without his fault. 83–2, Priv. L. No. 601, H. Rept. No. 2078.
- Grant asylum to a Communist aviator who flew his plane to the West. 83–2, Priv. L. No. 380.
- Grant the status of permanent residence to a 23-year-old Philippino woman who became pregnant while visiting the United States under a temporary visa, where the father had acquired permanent-residency status, and where the alternative would have been to separate the family, with the mother and infant returning to the Philippines and the father remaining here. 100–1, S. 393, H. Rept. No. 100–354.
- Reinstate U.S. citizenship to a 65-year-old native U.S. citizen who renounced citizenship in 1950 due to family obligations when he was married to a Mexican national. 100–1, H.R. 2358, H. Rept. No. 100–381.

- Enable a record-holding swimmer from East Germany who had defected to the United States to file a petition for naturalization without regard to residence and Communist Party membership. 100–2, H.R. 446, H. Rept. No. 100–598.
- Grant the status of permanent residence to a sports and media figure retroactively to 1950, and to provide that he shall be considered to have complied with residential and physical presence requirements of the Immigration and Naturalization Act. 86–2, H.R. 81–56, Priv. L. No. 86–486, H. Rept. No. 1506.

Budget Process

Research References

3 Deschler Ch 13 § 21
Manual §§ 169, 674, 695, 709, 726, 876b, 1007–1013
Budget and Accounting Act of 1921 (Pub. L. No. 67–13)
Congressional Budget and Impoundment Control Act of 1974 (Pub. L. No. 93–344)
Balanced Budget and Emergency Deficit Control Act of 1985 (Pub. L. No. 99–177), also known as the Gramm-Rudman Act
Balanced Budget and Emergency Deficit Control Reaffirmation Act of 1987 (Pub. L. No. 100–119)
Budget Enforcement Act of 1990 (Pub. L. No. 101–508)
Omnibus Budget Reconciliation Act of 1993 (Pub. L. No. 103–66)
Unfunded Mandates Reform Act of 1995 (Pub. L. No. 104–4)
Line Item Veto Act (Pub. L. No. 104–130)
Manual on the Federal Budget Process, CRS, Dec. 24, 1991

§ 1. In General; Legislative Background

Generally

There are three stages in the complex process by which the Congress allocates the fiscal resources of the federal government. There is, first, an *authorization* process under which federal programs are created in response to national needs, and second, an *appropriations* process under which funding is provided for those programs. See APPROPRIATIONS. The third stage is the congressional *budget* process, under which Congress annually establishes an overall fiscal policy on how much total spending and revenues ought to be and how total spending should be divided among the major functions of government such as defense, agriculture, and health. These three stages are not necessarily considered or completed in chronological order.

The Budget and Accounting Act of 1921

The modern era in budget reform began with the passage of the Budget and Accounting Act of 1921, which established a new Presidential budget system, and which permitted all items relating to a department to be brought together in the same bill. This Act (Pub. L. No. 67–13) authorized the President to submit a national budget in place of the previous uncoordinated agency submissions. This Act required him to submit his budget recommendations to Congress each year, and the Office of Management and Budget (OMB) was created to assist him in this respect. The 1921 Act also established the General Accounting Office and made it the principal auditing arm of the federal government. See 31 USC §§ 1101 *et seq.*

The Congressional Budget Act of 1974

Until 1974, the Congress lacked a comprehensive uniform mechanism for establishing priorities among its budgetary goals and for determining national economic policy regarding the federal budget. Budget responsibility remained fragmented throughout the Congress. Both taxing and spending actions were taken over a period of many months and by way of many different legislative measures. The size of the budget, and whether it should be in surplus or deficit, were not subject to effective controls. To address these problems, both Houses enacted over President Nixon's veto the Congressional Budget and Impoundment Control Act of 1974 (Pub. L. No. 93–

344). Deschler Ch 13 § 21. The Act (see 2 USC §§ 601 *et seq.*) consisted of 10 titles which:

- Established new committees on the budget in both the House and the Senate, and a Congressional Budget Office designed to improve Congress' informational and analytical resources with respect to the budgetary process.
- Set forth a timetable and established controls for various phases of the congressional budget process centered on a concurrent resolution on the budget to be adopted prior to legislative consideration of revenue or spending bills.
- Spelled out various enforcement procedures and provided for program review and evaluation.
- Provided for standardization of budget terminology.
- Established procedures for congressional review of Presidential impoundment actions.

Titles I through IX are known as the ''Congressional Budget Act'' and title X is known as the ''Impoundment Control Act.'' The Unfunded Mandates Reform Act of 1995 added a new part B to title IV of the Congressional Budget Act.

The central purpose of the process established by the Act is to coordinate the various revenue and spending decisions that are made in separate tax, appropriations, and legislative measures. (The Act originally provided for the adoption of two budget resolutions each year, but the Act was amended in 1985 to allow an entire fiscal-year cycle to be addressed by a single resolution.)

The Balanced Budget and Emergency Deficit Control Act of 1985

The Balanced Budget and Emergency Deficit Control Act of 1985 (referred to herein as Gramm-Rudman) made further significant changes in the budget process, and in the Congressional Budget Act procedures. (Gramm-Rudman is codified in 2 USC §§ 900 *et seq.*) Conceived as a statutory response to the burgeoning federal deficit problem, Gramm-Rudman instituted a single binding budget resolution, binding committee allocations, and provided for reconciliation and enforcement of fixed deficit targets through sequestration. *The Congressional Budget Process: A General Explanation*, Committee on the Budget, U.S. House of Representatives, July 1986, p 7. The Act included provisions amending the Congressional Budget Act to permit a new point of order against legislation exceeding the appropriate committee allocation (§ 302(f)), exempting the title II social security program from reconciliation (§ 310(g)), and precluding the breaching of budget authority or outlay ceilings or revenue floors, with certain exceptions (§ 311).

Budget Enforcement Act of 1990; Revisions and Extensions

The Budget Enforcement Act of 1990 (BEA) revised the Gramm-Rudman deficit targets and made them adjustable, and extended the sequestration process. It set limitations on distinct categories of discretionary spending, and created pay-as-you-go procedures to require that increases in direct spending or decreases in revenues due to legislative action be offset so that there is no net increase in the deficit. §§ 9, 10, infra. The Omnibus Budget Reconciliation Act of 1993 (OBRA) extended the discretionary spending limits and pay-as-you-go requirements through fiscal 1998. Pub. L. No. 103–66.

Enforcement Procedures Generally

The Congressional Budget Act of 1974 permits enforcement through parliamentary points of order against legislation violating its requirements and procedures. However, the enforcement mechanisms are not automatically applied and timely points of order from the floor are required to bring them into play. *Budget Process Law Annotated*, 1993 Edition, S. Prt 103–49, p 176. But the Congressional Budget Act also is linked to certain automatic enforcement procedures under Gramm-Rudman. The Congressional Budget Act sets forth discretionary spending limits used for purposes of sequestration, the automatic-formula reduction process that is required if triggered under Gramm-Rudman. Sequestration, see § 10, infra.

Enforcement through Budget Act points of order may be precluded under § 606(d)(2) if the pending measure is protected by one of the emergency designations permitted under Gramm-Rudman when declared by both the President and Congress (see §§ 251(b)(2)(D) and 252(e)).

Use of Special Rules

A concurrent resolution on the budget or a budget reconciliation bill that has been reported as privileged pursuant to clause 4(a) of Rule XI is privileged for consideration under the provisions of § 305 of the Act and clause 8 of Rule XXIII or the provisions of § 310 of the Act, as the case may be. In either case, however, the House may vary the parameters of consideration established in statute or standing rule by unanimous consent, by suspension of the rules, or by adoption of a special rule.

This is true because the statutory provisions concerned were enacted as exercises of the rulemaking powers of the House and the Senate, respectively, under the Constitution. See, for example, § 904(a). It is customary for the House to vary the parameters for consideration of a particular budget resolution or reconciliation bill by adopting a special order of business resolution recommended by the Committee on Rules.

Similarly, the various parliamentary enforcement mechanisms established in the Act—those sections establishing points of order against consideration of certain propositions—likewise constitute rules of the House and, as such, are liable to waiver by unanimous consent, by suspension of the rules, or by adoption of a special rule. It is not unusual for the House to waive such a point of order by adopting a special order of business resolution recommended by the Committee on Rules.

Under the Budget Act the Speaker must refer a concurrent resolution on the budget reported from the Budget Committee sequentially to the Rules Committee for not more than five legislative days if it includes any procedure or matter having the effect of changing a rule of the House. See § 301(c). After such a referral, an additional one-day layover follows the report of the Committee on Rules. See § 305(a)(1).

§ 2. Committee Jurisdiction; Reports and Estimates

Generally

To implement the congressional budget process, the Congressional Budget Act created the Senate and House Budget Committees (and the Congressional Budget Office). 2 USC §§ 601 *et seq.* The Budget Committees were given the authority to draft Congress' annual budget plan for the federal government for consideration by the full Senate and House. Unlike the authorizing and appropriating committees, which focus on individual federal programs, the Budget Committees focus on the federal budget as a whole and how it affects the national economy.

The House rules give the House Budget Committee jurisdiction over matters relating to the congressional budget, including concurrent resolutions on the budget. Rule X clause 1(d)(2). *Manual* § 673a. The Committee on Rules has the special oversight function of review of the budget process. Rule X clause 3(i). *Manual* § 693. In the 104th Congress, the limited jurisdiction of the Budget Committee was expanded to consolidate the budget process and the enforcement of budget controls. See *Manual* § 673b.

The Congressional Budget Act (§ 310) provides conditions for the reporting by the Budget Committees of reconciliation measures. The Act (§ 306) prohibits the consideration in either House of any measure dealing with a matter within the jurisdiction of its Budget Committee if not reported from the Budget Committee or discharged therefrom.

Committee Reports; Cost Estimates and Scorekeeping

The Congressional Budget Office (CBO) provides economic and program analyses and cost information on most reported public bills and resolu-

tions. Under the Budget Act, five-year cost estimates are prepared and published in the reports accompanying these bills. § 403(a).

Committee reports on legislation providing new budget authority, new spending or credit authority, or a change in revenues or tax expenditures, are required to contain the estimates and other detailed information mandated by § 308(a). The information mandated by § 308(a) is also required under House Rule XI clause 2(l)(3) except that, under an amendment adopted in 1995, the estimates with respect to new budget authority must include, when practicable, a comparison of the total estimated funding level for the relevant program (or programs) to the appropriate levels under current law.

If a bill is introduced in a form providing new budget or entitlement authority and is reported without curative amendment and without an estimate of its cost, then a § 308 point of order may be made against consideration of the bill. However, a special order for the consideration of a bill that ''self-executes'' the adoption of an amendment providing new budget authority into a bill to be subsequently considered does not, itself, provide new budget authority within the meaning of § 308 of the Budget Act. 103–1, Feb. 24, 1993, p ____.

The Director of the Congressional Budget Office is required to issue to the committees of the House and the Senate monthly reports detailing and tabulating the progress of congressional action on specified bills and resolutions. § 308(b)(1). The Budget Committees of each House are required to prepare budget ''scorekeeping'' reports and to make them available frequently enough to provide Members of each House with an accurate representation of the current status of congressional consideration of the budget. § 308(b)(2).

Committee allocations, see § 8, infra.

§ 3. The Budget Timetable

The Congressional Budget Act (§ 300) includes a timetable for various stages of the congressional budget process:

- On or before first Monday in February—President submits his budget to Congress

  Note: Additional time for submission of the President's budget can be provided for by law. Shortly after its submission, the two Budget Committees begin hearings on the budget, the economic assumptions upon which it is based, the economy in general, and national budget priorities.
- On or before February 15—Congressional Budget Office submits annual report

Note: The CBO is required to submit its annual report to the Budget Committees. This report deals primarily with overall economic and fiscal policy and alternative budget levels and national budget priorities.

- On or before February 25—Committees submit views and estimates to Budget Committees

  Note: This step involves the submission of the views and estimates of all standing committees of the House and Senate. These reports provide the Budget Committees with an early and comprehensive indication of committee legislative planning. These reports include estimates of new budget authority and outlays.

- On or before April 1—Senate Budget Committee reports concurrent resolution
- On or before April 15—Congress completes action on concurrent resolution on the budget

  Note: Congress may revise its budget resolution before the end of the appropriate fiscal year (see § 304 of the Budget Act); while this may be done at any point, the Congress in some years has followed the practice of revising the budget plan for the current fiscal year as part of the budget resolution for the upcoming fiscal year.

- May 15—Annual appropriation bills considered in the House

  Note: General appropriation bills may be considered in the House after May 15 even if a budget resolution for the ensuing fiscal year has yet to be agreed to. § 303(b)(1).

- On or before June 10—House Appropriations Committee reports last annual appropriation bill
- June 15—Congress completes action on reconciliation legislation

  Note: The mandatory June 15 deadline was repealed by BEA. However, the Congress may not adjourn for more than three calendar days during the month of July until the House has completed action on the reconciliation legislation (§ 310(f)) and the 13 general appropriation bills (§ 309).

- On or before June 30—House completes action on annual appropriation bills
- October 1—Fiscal year begins

  Note: The fiscal year begins on October 1, and ends on September 30. In the past, action on appropriation bills has not always been completed by October 1, necessitating the passage of a ''continuing resolution'' to provide appropriations on a temporary basis until the regular appropriation bills are enacted.

Deadlines for other stages in the budget process, such as notification of adjustment in maximum deficit amounts, the President's mid-session

budget review, and various CBO and OMB sequestration reports, were provided for in Gramm-Rudman § 254(a).

Under rules adopted in 1995, each standing committee has the deadline of February 15 of the first session for the submission of its oversight plans for the Congress to the Committees on Government Reform and Oversight and House Oversight. These plans must be reported to the House by the Committee on Government Reform and Oversight by March 31 of the session. Rule X clause 2(d).

§ 4. Budget Resolutions; Consideration and Debate

Generally

The budget resolution is a concurrent resolution; as such it is not a law, but serves as an internal framework for Congress in its action on separate revenue, spending, and other budget-related measures. The content of budget resolutions is governed by the Congressional Budget Act (see particularly §§ 301, 606). Budget resolutions set forth budgetary levels for the upcoming fiscal year and for the four succeeding fiscal years. The budget totals set forth what the Congress considers to be the appropriate amounts, including amounts for total spending and total revenues. The budget resolution gives the Congress a mechanism for establishing federal spending priorities. The budget resolution accomplishes this by dividing up federal spending among various classifications such as national defense, agriculture, and health. These classifications, known as ''budget functions,'' provide the Congress with a means of allocating federal resources among broad categories of spending. *The Congressional Budget Process, An Explanation,* Committee on the Budget, U.S. Senate, Mar. 1988, p 4.

Section 301(b)(4) of the Budget Act permits a concurrent resolution on the budget to ''set forth such other matters, and require such other procedures, relating to the budget, as may be appropriate to carry out the purposes of [the] Act.'' (This provision is sometimes referred to as the ''elastic clause.'') Textually, the ''other matters'' and ''procedures'' admitted by this section must: (1) relate to the budget; and (2) be appropriate to carry out the purposes of the Budget Act.

> *Note:* They must not include matter that would destroy the privilege of the concurrent resolution on the budget, such as by effecting a special order of business. The only matter in the nature of a special order of business that may be included in a privileged concurrent resolution on the budget is a reconciliation directive. Reconciliation, see § 7, infra.

Floor Consideration

The Congressional Budget Act provides special procedures for House consideration of a concurrent resolution on the budget reported by the Committee on the Budget. Floor consideration may begin after a five-day layover period that starts when the report on the resolution first becomes available to the Members. See § 305(a)(1).

The Act provides for consideration in the Committee of the Whole. Ten hours are allowed for general debate, with an additional four hours permitted on economic goals and policies. Amendments are considered under the five-minute rule (§ 5, infra). After the Committee rises and reports the resolution back to the House, the previous question is considered as ordered on the resolution and any amendments thereto to final passage without intervening motion. A motion to recommit the resolution is not in order, nor is a motion to reconsider. § 305(a)(2)–(5). The question having been put on final passage, the yeas and nays are considered as ordered. Rule XV clause 7.

A budget resolution being considered in Committee of the Whole has been held subject to a motion to rise and report the resolution back to the House with the recommendation that the resolving clause be stricken. 103–1, Mar. 18, 1993, p ____.

The Budget Act procedures for floor consideration of a budget resolution are applicable only to privileged budget resolutions which have been reported from committee, and not to unreported budget resolutions. 98–2, Apr. 5, 1984, pp 7992, 7993.

The Rules Committee may report a special rule to be applied during the consideration of a particular budget resolution or conference report. The committee may report a special rule permitting only certain designated amendments to be offered to the resolution. See § 1, supra. In recent Congresses, only designated amendments in the nature of substitutes have been permitted, and perfecting amendments have been precluded. H. Res. 384, 103–2, Mar. 10, 1994, p ____.

A budget resolution may under some circumstances be divided so as to permit a separate vote on particular sections therein. 102–2, Mar. 5, 1992, p ____. In one instance, where a pending budget resolution contained one section revising the congressional budget for the fiscal year, preceded by sections setting forth budget targets for ensuing fiscal years as well as reconciliation instructions, and followed by a final section on reporting of certain fiscal information, the question of its adoption was divided on the demand of a Member for two separate votes (1) on the first and final portions of the resolution and then (2) on the separable section in between. 96–2, May 7, 1980, pp 10185–87.

Budget Resolution to Precede Consideration of Related Legislation

The Congressional Budget Act precludes certain budget-related legislation for a fiscal year until the budget resolution for that year has been adopted by both Houses. § 303(a). The essence of section 303(a) of the Budget Act is timing. It reflects a judgment that legislative decisions on expenditures and revenues for the coming fiscal year should await the adoption of the budget resolution for that year. 101–2, July 25, 1990, p ____. Legislation ruled out under this provision has included:

- A conference report containing new spending authority in the form of entitlements to become effective in fiscal years 1978 through 1980, where the concurrent resolution on the budget for those fiscal years had not yet been adopted. 94–2, Sept. 30, 1976, pp 34074, 34075.
- An amendment providing new entitlement authority to become effective in a fiscal year before adoption of the budget resolution for that year. 94–2, Oct. 1, 1976, pp 34554–57; 102–2, Mar. 26, 1992, p ____ (six rulings).
- An amendment providing new budget authority for a fiscal year, before adoption of a budget resolution for that year. 99–1, July 17, 1985, pp 19435, 19436.

Under § 303 of the Act, the Chair is guided by his own judgment of the text and of the arguments presented from the floor as to whether an amendment involves spending or revenues. The statutory requirements that the Chair determine certain levels of spending or revenues on the basis of estimates made by the Committee on the Budget apply only to questions arising under § 302 (allocation breaches) or § 311 (breaches of totals). Nevertheless, the Chair may treat Budget Committee estimates as persuasive on questions arising under § 303 (timing breaches), whether to maintain consistency in determinations under title III of the Act or simply for their analytical merit. 102–2, Mar. 26, 1992, p ____.

Waivers of § 303(a) have been provided pursuant to a special rule from the Committee on Rules. See § 1, supra.

§ 5. — Amendments to Resolutions

Generally

Under the Congressional Budget Act (§ 305(a)(5)), amendments to budget resolutions are considered in the Committee of the Whole under the five-minute rule in accordance with House Rule XXIII. Under clause 8 of that rule, the resolution is open to amendment at any point, so that the Committee of the Whole may amend the functional categories section prior to consideration of the total budget allocations. 95–2, May 2, 1978, p 12094.

Amendments to Achieve Mathematical Consistency

The 96th Congress adopted provisions amending Rule XXIII clause 8 to require, with certain exceptions, that amendments to concurrent resolutions on the budget be mathematically consistent. 96–1, Jan. 15, 1979, p 8. Under this rule, amendments making changes in budget authority and outlay aggregate totals must be accompanied by comparable changes in functional categories. A point of order will lie against an amendment to the resolution increasing the aggregates and a functional category for budget authority and outlays but not changing the amount of the deficit. However, an amendment which only transfers an amount of budget authority from one functional category to another—that is, reduces one category by a certain amount and adds the same amount to another category—need make no changes in the aggregates to achieve mathematical consistency. 96–1, May 8, 1979, p 10271.

An amendment to achieve mathematical consistency throughout the resolution may either change the functional categories to conform with the aggregates, or vice versa, and if such an amendment is offered and rejected, another amendment in different form to achieve mathematical consistency may be offered. 96–1, May 14, 1979, pp 10967–75. Under § 305(a)(5) of the Budget Act, an amendment or amendments to achieve mathematic consistency can be offered at any time up to final passage.

A change in the public debt limit from that figure reported by the Committee on the Budget is not in order, except as part of an amendment offered at the direction of the Budget Committee to achieve mathematical consistency. Rule XXIII clause 3. Public debt limit, see § 14, infra.

Germaneness

Unless protected by special rule, an amendment to a concurrent resolution on the budget must be germane to the text of the resolution. An amendment expressing the sense of Congress that the Impoundment Control Act be repealed for a fiscal year and calling for a review of the Budget Act and the budget process, has been conceded to be not germane. 96–2, Nov. 18, 1980, p 30026.

§ 6. — Debate on Conference Reports

Under § 305(a)(6) of the Congressional Budget Act there can be up to five hours of debate in the House on a conference report on a concurrent resolution on the budget, such debate to be equally divided between the majority and minority parties. Where the conferees report in total disagreement, debate on the motion to dispose of the amendment in disagreement is not

governed by the statute and is instead considered under the general ''hour'' rule in the House. 94–2, May 13, 1976, p 13756; 95–1, May 17, 1977, p 15126; and 95–2, May 17, 1978, p 14117.

§ 7. Reconciliation Procedures

The Congressional Budget Act (§ 301(b)(2)) provides for the inclusion of reconciliation instructions in a budget resolution and for the reporting and consideration of reconciliation legislation. The purpose of the reconciliation process is to require committees to implement the spending and tax policy decisions agreed to in the budget resolution. If the reconciliation directive involves more than one committee in each House, then all committees affected by the directive are to submit their recommendations to their respective Budget Committees. The Budget Committees then assemble, without substantive revision, all the recommendations into one package for action by the House or Senate. (§ 310). *The Congressional Budget Process: A General Explanation*, Committee on the Budget, U.S. House of Representatives, July 1986, p 15. In the 104th Congress, the Senate took the position that reconciliation instructions might contemplate several reconciliation bills. 104–2, May 21, 1996, p ____ (decision of Chair sustained on appeal); 104–2, May 23, 1996, p ____.

Reconciliation instructions are directives to committees to recommend changes in existing law to achieve the goals in spending or revenues contemplated by the budget resolution. Reconciliation provides Congress with a mechanism to achieve reduced spending by changing the law applicable to certain entitlement programs as part of its budget plan. Merely lowering entitlement spending levels in the budget resolution may not suffice, because entitlement laws require the government to pay specified benefits to qualifying individuals unless Congress changes those entitlement laws.

The Congressional Budget Act (see § 310(d)) requires that amendments offered to reconciliation legislation in either the House or the Senate must not increase the level of deficit (if any) in the resolution. In order to meet this requirement, an amendment reducing revenues or increasing spending must offset deficit increases by equivalent revenue increases or spending cuts. *Manual on the Federal Budget Process*, CRS, Dec. 24, 1991, p 55. Section 313 of the Budget Act addresses the subject of ''extraneous'' material in a reconciliation bill—the so-called ''Byrd Rule.'' The enforcement of this section applies only in the Senate, but can be directed against matter originating with the House.

§ 8. Adherence to Spending and Revenue Levels

Generally

With certain exceptions, the Congressional Budget Act (§ 311(a)) precludes specified measures—including amendments and conference reports—that would cause total budget authority or total outlays to exceed, or total revenues to be below, the level set forth in the budget resolution after the Congress has completed action thereon. The provision is enforced by raising points of order against the consideration of measures which would breach the ''appropriate levels'' of total new budget authority or total outlays or total revenues in the budget resolution. The revenue and spending estimates of the Budget Committees are used to determine revenue and spending levels. § 311(c). These budget levels represent a congressional determination of appropriate fiscal policy and national budget priorities. *The Congressional Budget Process: A General Explanation*, Committee on the Budget, U.S. House of Representatives, July 1986, p 12. Section 311 of the Act has been interpreted to prohibit consideration of an amendment striking out a rescission of existing budget authority where its effect would be to increase the net new budget authority in the bill in breach of the applicable total. 97–1, May 12, 1981, p 9314. A point of order will lie against an amendment that has the effect of reducing revenues for the fiscal year below the total level of revenues contained in the concurrent resolution on the budget for that year. See 94–2, Oct. 1, 1976, pp 34554–57.

Waivers

The House may agree to a special rule reported from the Committee on Rules waiving points of order against consideration of a bill or resolution in violation of § 311 of the Congressional Budget Act. 96–2, Jan. 24, 1980, p 581. Thus, in 1980, a special rule waived points of order against consideration of a bill containing new budget authority for the current fiscal year in excess of the ceiling on total budget authority established in the concurrent resolution on the budget. 96–2, May 13, 1980, p 10999. See § 1, supra.

Committee Allocations; ''Crosswalking''

Under the Congressional Budget Act, provision is made for the allocation—to each committee with jurisdiction—of ''appropriate levels'' of spending authority. See §§ 302(a); 602(a). The joint statement accompanying a conference report on the budget resolution makes an allocation of total budget authority, outlays, and entitlement authority contained in the resolution among the appropriate committees of the House and Senate. For example, if the conference report allocates $7 billion in budget authority and $6

billion in outlays for the functional category ''Community and Regional Development,'' the statement of managers must divide those amounts among the appropriate committees of the House and Senate with jurisdiction over programs and authorities covered by that functional category. See Deschler Ch 13 § 21. *The Congressional Budget Process: A General Explanation*, Committee on the Budget, U.S. House of Representatives, July 1986, p 13.

The allocation of the budget plan's spending levels among the spending committees is known informally as ''crosswalking.'' Committee crosswalks for both the House and Senate are set out initially in the report of each House accompanying the budget resolution, and finally in the joint explanatory statement of the conference committee on the budget resolution. Each committee is allocated an overall level for discretionary spending within its jurisdiction that is consistent with the congressional budget plan. Under § 602(b) Appropriation Committees then subdivide their allocations among their subcommittees for programs within their jurisdiction.

Any Member may raise a timely point of order against a reported bill, amendment or conference report that would exceed the relevant committee allocation. See § 302(f). Thus, where a general appropriation bill provided new budget authority to the limit of the pertinent allocation pursuant to § 602 of the Budget Act, an amendment scored by the Budget Committee as providing further new budget authority was ruled out as violating § 302(f) of the Budget Act by causing that allocation to be exceeded. 102–1, June 26, 1991, p ____. Even an amendment delaying the imposition of a certain monetary penalty has been held to violate § 302(f), the rationale being that, by foregoing offsetting receipts, it provided new budget authority in excess of the pertinent committee allocation. 102–1, July 18, 1991, p ____. On the other hand, an amendment that provides no new budget authority or outlays but instead results in outlay savings is not subject to a point of order under these provisions. 100–1, June 30, 1987, p 18308.

Pursuant to section 302(g) of the Budget Act, the Chair relies on estimates provided by the Committee on the Budget in determining levels of spending authority for purposes of deciding questions of order under section 302(f) of the Budget Act. 102–1, June 26, 1991, p ____.

The § 311(b) Exception

As noted above, § 311(a) precludes Congress from considering legislation that would cause total revenues to fall below, or total new budget authority or total outlays to exceed, the appropriate level set forth in the budget resolution. But § 311(a) does not apply in the House to spending legislation if the committee reporting the measure has stayed within its allocation of new discretionary budget authority and new entitlement authority. See

§ 311(b). Accordingly, the House may take up any spending measure that is within the appropriate committee allocations, even if (solely due to excessive spending within another committee's jurisdiction) it would cause total spending to be exceeded.

Emergency Spending

Budget Act points of order against a bill under either § 311 (breach of the appropriate total) or under § 302 (breach of appropriate allocation) do not lie if the spending is protected by an emergency designation authorized by Gramm-Rudman. Such exemptions are specifically permitted by new § 606(d)(2) of the Budget Act. Under Gramm-Rudman, the emergency designation must be identified as such by both the President and Congress. See §§ 251(b)(2)(D) and 252(e).

§ 9. Deficit Targets

Section 601(a)(1) of the Budget Act specified maximum deficit amounts (MDA) for fiscal years through 1995. Congressional budget resolutions had to be within the maximum deficit amount for the applicable fiscal year, a requirement that was enforced by MDA points of order under the Congressional Budget Act. See § 606(b). While these statutory deficit amounts were not in effect beyond fiscal year 1995, deficit limits were specified in the budget resolution for fiscal year 1994 through fiscal year 1998. See H. Con. Res. 64 (conference report agreed to Mar. 31, 1993, p ____).

Under current Gramm-Rudman provisions, the Office of Management and Budget (OMB) provides certain estimates as to fiscal year deficits. § 252(b). Under the original Gramm-Rudman law, the Comptroller General was a participant in the deficit amelioration process. However, in July 1986, the Supreme Court declared the sequestration procedure set forth in Gramm-Rudman to be unconstitutional because it delegated executive powers to the Comptroller General, an officer subject to removal by the Congress. The Supreme Court in upholding the ruling of the District Court invoked the separation of powers doctrine. The court concluded that ''Congress cannot reserve for itself the power of removal of an officer charged with the execution of the laws except by impeachment. To permit the execution of the laws to be vested in an officer answerable only to Congress would, in practical terms, reserve in Congress control over the execution of the laws.'' See *Synar* v *U.S.*, 106 S.Ct. 3181, 478 US 714.

§ 10. Sequestration

Sequestration involves the issuance of a Presidential order that permanently cancels budgetary resources (except for special funds and trust funds) for the purpose of achieving a required amount of outlay savings. Sequestration orders are automatically triggered by OMB reports mandated under Gramm-Rudman. Gramm-Rudman, as amended, provides multiple sequestration procedures. The sequestration process is used to enforce the deficit targets (§ 253), to enforce the discretionary spending limits (§ 251), and to enforce the pay-as-you-go requirements (§ 252). These provisions require that such sequesters occur on the same day—15 calendar days after Congress adjourns to end a session. Additional sequesters may occur subsequently in the fiscal year to eliminate any breach in the discretionary spending limits; this is referred to as ''within-session'' sequestration. § 251(a)(6).

Modification or Suspension of Sequestration

The OMB having issued a final sequestration report for a fiscal year, the Majority Leader of either House of Congress may under Gramm-Rudman introduce a timely joint resolution directing the President to modify his most recent sequestration order or to provide an alternative to reduce the deficit for such fiscal year. § 258A(a). The issuance of a ''low growth'' report by the CBO may also trigger a joint resolution suspending the relevant enforcement provisions of titles III and IV of the Budget Act. § 258(a). For an example of such a resolution, see S.J. Res. 44, 102–1, Jan. 23, 1991, p ____.

A sequestration ordered by the President for fiscal year 1990 was rescinded by the Congress when it adopted a deficit-reducing reconciliation bill for that year. In this instance, initial sequestration reports for fiscal year 1990 were issued by the Directors of both CBO and OMB. Accordingly, the President issued an initial sequestration order directing that the reductions specified in the OMB report be made on a provisional basis; a final sequestration order was then issued by the President. The reconciliation bill included provisions to rescind the orders and restore the sequestered funds, and reduced the deficit by achieving certain other savings. Pub. L. No. 101–239.

§ 11. Spending Controls

Discretionary Spending

The Budget Enforcement Act of 1990 (BEA) established discretionary spending limits for fiscal years 1991 through 1995 in § 601 of the Congressional Budget Act. The limits on discretionary budget authority and discre-

tionary outlays are enforceable by the sequestration process under § 251 of Gramm-Rudman. For fiscal years 1994 and 1995, the limits applied to total discretionary budget authority and total discretionary outlays (rather than being distributed among defense, domestic, and international categories). See § 601(a)(2).

The Omnibus Budget Reconciliation Act of 1993 (OBRA), Pub. L. No. 103–66, § 14002, further extended the discretionary spending limits of § 601. OBRA continues the use of adjustable discretionary spending limits through fiscal year 1998. As was the case for fiscal years 1994 and 1995, OBRA established separate limits each year for total discretionary budget authority and total discretionary outlays. See H. Conf. Rept. No. 103–213, 103d Cong. 1st Sess. See also 103–1, Aug. 4, 1993, p ____.

Gramm-Rudman sets forth a detailed procedure for the periodic, automatic adjustment of the discretionary spending limits. Adjustments are made for various factors, including changes in accounting concepts and inflation. See § 251(b)(1).

Direct Spending

Direct spending is spending controlled outside of the annual appropriations process. It is composed of entitlement and other mandatory spending programs, including, under Gramm-Rudman, the food stamp program. § 250(c)(8). Such programs are generally funded by provisions of the permanent laws that created them. For these reasons Congress relies on reconciliation procedures to enforce budget policies with respect to existing spending laws. Reconciliation, see § 7, supra.

Direct spending is not capped, but operates under Gramm-Rudman's so-called paygo process, which requires that direct spending and revenue legislation enacted for a fiscal year be deficit neutral. See § 252.

§ 12. New Spending Authority

A conventional authorization establishes or continues a government agency or program, and while it may place a limit on the amount of budget authority that may be appropriated for that purpose (Deschler Ch 25 § 2.13), the authorized funds are available only to the extent provided for in appropriation acts originated by the Appropriations Committee (see APPROPRIATIONS). Spending legislation which circumvents the appropriations process is called ''backdoor spending.'' Restrictions against such legislation are found in the Congressional Budget Act. With certain exceptions, new ''spending authority'' is to be ''effective'' only as provided in appropriation acts. § 401(a). ''Spending authority'' is defined by the Act to include contract authority and borrowing authority. § 401(c)(2). The Act has been con-

strued to prohibit the consideration of a measure containing new spending authority to incur indebtedness, if the budget authority therefor is not provided in advance by appropriation acts. See 94–2, Sept. 27, 1976, p 32655.

The ''spending authority'' referred to in § 401(a) does not apply to bills that provide legislative authorizations that are subject to the appropriations process. For example, a point of order that a section of a bill providing that certain loan receipts were ''authorized to be made available'' was in violation of the Budget Act was overruled on the ground that the funds were subject to the appropriation process and thus no new spending authority was involved. 94–1, Sept. 10, 1975, pp 28270, 28271. On the other hand a conference report authorizing the Secretary of Health, Education, and Welfare to borrow funds by issuing government notes as a public debt transaction, not subject to amounts specified in advance in appropriation acts, was conceded to violate § 401(a) of the Budget Act and was ruled out on a point of order. 94–2, Sept. 27, 1976, p 32655.

Whether or not an amendment to a pending measure provides new spending authority for a program is determined by its marginal effect on the pending measure (rather than current law). See 102–2, Mar. 26, 1992, p ____.

The House may adopt a resolution reported from the Committee on Rules waiving points of order against the consideration of a conference report containing an amendment providing new spending authority not subject to amounts provided in advance by appropriation acts in violation of § 401(a) of the Budget Act. 95–1, Dec. 15, 1977, pp 38949, 38950 [H. Res. 935, providing for consideration of the Clean Water Act of 1977]. In this instance, the Budget Committee supported the waiver for the Clean Water Act with the understanding that a concurrent resolution would be offered after adoption of the report to correct the enrollment of the bill to make the contract authority subject to the appropriation process. A similar procedure was followed with respect to a waiver of points of order against a reclamation projects bill in 1976. 94–2, Aug. 25, 1976, p 27747.

New Credit Authority

The Congressional Budget Act contains restrictions against the consideration of new credit authority in reported measures unless such authority is limited to the extent or in amounts provided in appropriation acts. § 402(a). Legislation carrying new credit authority is also subject to § 504(b) of the Budget Act. Section 504(b) constitutes a standing requirement, notwithstanding any other provision of law, that new credit authority be effective only to the extent that subsidy costs are capped and appropriated in advance.

Entitlement Authority

New spending in the form of an entitlement may be subject to points of order under the Congressional Budget Act. A measure containing a new entitlement is subject to a point of order (see § 401(b)(1)) unless the entitlement (as defined by the Act) is to take effect after the start of the appropriate fiscal year. See, for example 99–2, June 26, 1986, p 15729. In addition, a point of order lies under § 303(a) against an amendment providing new entitlement authority for a coming fiscal year before the adoption of a concurrent resolution on the budget for that fiscal year. 102–2, Mar. 26, 1992, p ____.

An amendment enlarging the class of persons eligible for a government subsidy has been held to provide new entitlement authority within the meaning of the Budget Act. 102–2, Mar. 26, 1992, p ____.

§ 13. Social Security Funds

Receipts and disbursements of the Social Security trust funds are not to be counted as new budget authority, outlays, receipts, or as deficit or surplus. Under the Budget Enforcement Act of 1990 (BEA), the off-budget status of these programs applies for purposes of the President's budget, the congressional budget, and under Gramm-Rudman. See § 13301.

Transactions of the Social Security trust funds—the Federal Old-Age and Survivors Insurance Trust Fund and the Federal Disability Insurance Trust Fund (OASDI)—are excluded from the spending and revenue totals under the BEA. The trust funds were included in the deficit calculations made under Gramm-Rudman for deficit reduction purposes, but were exempt from sequestration. The BEA (in §§ 13301–13306) reaffirms the off-budget status of Social Security trust funds, excludes them from the deficit and PAYGO calculations made under Gramm-Rudman, and continues their exemption from sequestration. The BEA creates a ''fire wall'' point of order in the House to prohibit the consideration of legislation that would change certain balances of the Social Security trust funds over specified periods under § 13302. H. Conf. Rept. No. 101–964, 101st Cong. 2d Sess.

The Congressional Budget Act of 1974 prohibits the consideration of certain reconciliation legislation that contains recommendations with respect to the title II program under the Social Security Act. § 310(g).

§ 14. The Budget Process and the Public Debt Limit

A limit on the public debt is fixed by law. 31 USC § 3101. Increases in the debt limit are frequently needed because of increases in federal debt. Changes in the public debt limit may be effected through procedures set

forth in House Rule XLIX. *Manual* § 945. The budget resolution plays a key role in this process. Reconciliation directives relative to changes in the public debt may be included in the concurrent resolution on the budget under § 310(a)(3) of the Budget Act. Reconciliation, see § 7, supra.

If the budget resolution as adopted sets forth an amount for the public debt which is different from the amount of the statutory limit, the procedure specified by Rule XLIX operates. *Manual* § 945. After the budget resolution is adopted by the Congress, a joint resolution changing the debt limit is prepared by the Clerk and sent to the Senate for its approval. This resolution is ''deemed,'' under the conditions of House Rule XLIX, to have passed the House. The date of final House action in adopting the conference report on the concurrent resolution on the budget, rather than the date of final Senate action (when the Senate acts later) or the date of receipt of a message from the Senate informing the House of final Senate action, is the appropriate date under Rule XLIX for deeming the House to have engrossed and passed a joint resolution increasing the statutory limit on the public debt. 103–1, Apr. 1, 1993, p ____.

In some years, instead of a joint resolution, Congress has enacted a separate bill raising the debt limit. See, for example, H.R. 5350, Aug. 4, 1990. The debt limit may also be increased by a provision attached to other legislation, such as a reconciliation bill. See the Omnibus Budget Reconciliation Act of 1993 (Pub. L. No. 103–66). By adoption of a special order, Rule XLIX may be made inapplicable to a specific budget resolution. See H. Res. 149, May 17, 1995, p ____.

§ 15. Impoundments Generally

Executive Branch Authority; Types of Impoundments

The executive branch has no inherent power to impound appropriated funds. In the absence of express congressional authorization to withhold funds appropriated for implementation of a legislative program, the executive branch must spend all the funds. *Kennedy* v *Mathews*, 413 F Supp 1240 (1976). See also *Train* v *City of New York*, 420 U.S. 35, 95 S.Ct. 839, 43 L.Ed.2d 1 (1975). Accordingly, if the controlling statute gives the officials in question no discretion to withhold the funds, a court may grant injunctive relief directing that they be made available. *Kennedy*, at p 1245.

The impoundment of appropriated funds may be proposed by the President pursuant to the Impoundment Control Act of 1974. Two types of impoundments are referred to by this statute: (1) rescissions, which are the permanent cancellation of spending (§ 1012), and (2) deferrals, which impose a temporary delay in spending (§ 1013), codified at 2 USC §§ 681 *et seq.*

The Impoundment Control Act was enacted by Congress in 1974 in an effort to control the budgetary impoundment powers asserted by the President. As the court noted in *City of New Haven, Conn.* v *U.S.*, 634 F Supp 1449 (D.D.C. 1986), in the early 1970's the President began to use impoundments as a means of shaping domestic policy, withholding funds from various programs he did not favor. The legality of these impoundments was repeatedly litigated, and by 1974, impoundments had been vitiated in many cases. See, *e.g., National Council of Community Mental Health Centers, Inc.* v *Weinberger,* 361 F Supp 897 (D.D.C. 1973) (public health funds).

§ 16. — Rescissions; Line Item Veto

Under Impoundment Control Act

Under the Impoundment Control Act, the President may propose to rescind all or part of the budget authority Congress has appropriated for a particular program. To propose a rescission the President must send a special message to Congress detailing the amount of the proposed rescission, the reasons for it, and a summary of the effects the rescission would have on the programs involved. § 1012(a). Under the Act, Congress then has 45 days within which to approve the proposed rescission by a ''rescission bill'' that must be passed by both Houses. § 1012(b). If it fails of approval, the President must allow the full amount appropriated to be spent. *City of New Haven, Conn.* v *U.S.*, 634 F Supp 1449 (D.D.C. 1986), 1452.

The 45-day period prescribed by the Act applies only to the initial consideration of the bill in the House; the consideration of a conference report on such a bill is subject only to the general rules of the House relating to conference reports and is not prevented by the expiration of the 45-day period following the initial consideration of the bill. 94–1, Mar. 25, 1975, pp 8484, 8485.

The Impoundment Control Act sets forth detailed procedures expediting and governing the consideration of a rescission bill introduced under its provisions. §§ 1017(a)-(c). These procedures are rarely invoked in the modern practice and the ''rescission bill'' referred to in the Act is not the only means by which the House may take action on such a matter. The House may address the question through other legislation without following the procedures set forth in § 1017. 94–1, Mar. 25, 1975, p 8484.

Rescissions of prior appropriations can be reported in a general appropriation bill and the inclusion of rescission language by the Committee on Appropriations is excepted from the prohibition against provisions ''changing existing law'' under Rule XXI clause 2(b). See *Manual* §§ 834b, 834f.

Under Line Item Veto Act

Enhanced rescission authority was given to the President on Apr. 9, 1996, with the adoption of the Line Item Veto Act (Pub. L. No. 104–130). This new authority first becomes effective in the 105th Congress. This Act added new part C to title X of the Congressional Budget and Impoundment Control Act of 1974 (2 USC §§ 631 *et seq.*). If he acts within a limited time frame after the enactment, and if certain presidential determinations are made, the President is authorized to cancel:

- Any dollar amount of discretionary budget authority.
- Any item of new direct spending.
- Any limited tax benefit.

The President must determine that such cancellation will reduce the federal budget deficit, not impair any essential government functions, and not harm the national interest. He must notify the Congress of such cancellation by transmitting a special message within five calendar days (excluding Sundays) after the enactment of the law. § 1021(a).

Provision is made for a 30-day congressional review period, and for expedited consideration of disapproval bills. A disapproval bill must be reported not later than seven calendar days after introduction or be subject to a highly privileged motion to discharge. After being reported or discharged, a disapproval bill may be considered in the Committee of the Whole with consideration of the bill not to exceed one hour and with no amendment in order except that any Member, if supported by 49 other Members, may offer an amendment striking a cancellation or cancellations from the bill. Any conference with the Senate would also be expedited. § 1025(f).

The cancellation takes effect upon receipt in the House and the Senate of the special message notifying the congress of the cancellation. If a disapproval bill for such special message is enacted into law, then all cancellations disapproved in that law become null and void. § 1023.

§ 17. — Deferrals

Under the Impoundment Control Act of 1974, the President must notify Congress of the proposed deferral of any budget authority, the reasons for the deferral, the impact the deferral will have on the programs involved, and ''any legal authority invoked to justify the proposed deferral.'' § 1013(a). See codification at 2 USC § 684(a).

Until 1986, the Act was used frequently as the basis for Presidential deferral proposals and for their consideration by the Congress. The statute as originally written allowed a deferral to be overridden by a resolution of

disapproval passed by either House. Pub. L. No. 93–344, title X, § 1013. Congress could reject the proposal by one-House veto or in subsequent legislation. Today, the Congress may disapprove a deferral through the enactment of ordinary legislation or through appropriation acts; but it may not do so through a resolution of disapproval by one House only under recent court rulings. See CONGRESSIONAL DISAPPROVAL ACTIONS.

In 1986, a suit was brought to contest the validity of certain deferrals proposed by the President under § 1013 of the Act. In November 1985, the President had signed the fiscal year 1986 appropriations bill for the Department of Housing and Urban Development (Pub. L. No. 99–160, 99 Stat. 909), which appropriated funds for certain community development programs. In February 1986, the President sent impoundment notices to Congress pursuant to the Act announcing his deferrals of the expenditure of funds for the programs at issue. The plaintiffs in the suit included various cities, community groups, and Members of Congress. The plaintiffs challenged as unconstitutional the provision allowing a so-called one-House legislative veto of impoundments proposed by the President, such vetoes having been declared unconstitutional under the Supreme Court decision in *Immigration and Naturalization Service* v *Chadha*, 462 U.S. 919, 103, S.Ct. 2764, 77 L.Ed.2d 317 (1983). The plaintiffs argued that the unconstitutional legislative veto provision contained in § 1013 rendered the *entire* section invalid, leaving the President without statutory authority on which to base the deferrals in question. After analyzing the intent of Congress in enacting § 1013, the District Court of the District of Columbia held that the section's unconstitutional legislative veto provision was inseverable from the remainder of the section. *City of New Haven, Conn.* v *U.S.*, 634 F Supp 1449 (D.D.C. 1986). Accordingly, it declared § 1013 void in its entirety and ordered the defendants to make the deferred funds available for obligation. *City of New Haven*, at 1460. The judgment of the District Court in striking down § 1013 in its entirety was affirmed by the U.S. Court of Appeals. *City of New Haven, Conn.* v *U.S.*, 809 F2d 900 (D.C. Cir. 1987).

In 1987, after § 1013 of the Act was declared unconstitutional, the Act was amended to exclude the one-House legislative veto procedure, and limitations were placed on the purposes for which deferrals could be made. See Pub. L. No. 100–119. The Act now permits deferrals only in three specified situations: ''to provide for contingencies,'' ''to achieve savings made possible by or through changes in requirements or greater efficiency of operations,'' or ''as specifically provided by law.'' § 1013. The same language is used in the Anti-Deficiency Act. 31 USC § 1512(c)(1). The purpose of such language was to preclude the President from invoking § 1013 as authority for implementing ''policy'' impoundments, while preserving the

President's authority to implement routine ''programmatic'' impoundments. *City of New Haven, Conn.* v *U.S.*, 809 F2d 900 at p 906 (note).

Unreported Deferrals

Section 1015(a) of the Impoundment Control Act (2 USC § 686(a)) requires the Comptroller General to report to the Congress whenever he finds that any officer or employee of the United States has ordered, permitted, or approved a reserve or deferral of budget authority, and the President has not transmitted a special impoundment message with respect to such reserve or deferral.

§ 18. Unfunded Mandates

The Unfunded Mandates Reform Act of 1995 (Pub. L. No. 104–4; 109 Stat. 48 *et seq.*) added a new part B to title IV of the Congressional Budget Act of 1974 (2 USC §§ 658–658g) that imposes several requirements on committees with respect to ''federal mandates,'' establishes points of order to enforce those requirements, and precludes the consideration of a rule or order waiving such points of order in the House. Section 425 of the Congressional Budget Act establishes a point of order against consideration of a bill, joint resolution, amendment, motion, or conference report containing unfunded mandates. Section 426(a) of the Act establishes a point of order against consideration of any rule or order that waives the application of § 425. Points of order under §§ 425 and 426(a) of the Budget Act are disposed of via the question of consideration. Section 426(b)(2) establishes as a threshold premise for cognizability of a point of order under §§ 425 or 426(a) the specification of precise legislative language that is alleged to constitute a federal mandate. On May 23, 1996, the House voted to consider an amendment notwithstanding a point of order raised under § 425. 104–2, p ____.

Calendar Wednesday

Research References
7 Cannon §§ 881–971
Deschler Ch 21 § 4
Manual § 897

§ 1. In General; Forms

Under the Calendar Wednesday rule, Wednesdays are set apart for the consideration, pursuant to a call of committees, of unprivileged bills on the House and Union Calendars. Rule XXIV clause 7, first adopted in 1909. Today, the Calendar Wednesday procedure is utilized infrequently due to its cumbersome operation and to the fact that nonprivileged bills may be considered more effectively pursuant to other procedures, such as a special order from the Committee on Rules, suspension of the rules, or unanimous consent. Deschler Ch 21 § 4. Where the Rules Committee has declined to report a special order providing for the consideration of a bill, it may be taken up pursuant to the Calendar Wednesday rule.

The Calendar Wednesday rule may be dispensed with by a two-thirds vote (§ 11, infra), and does not apply during the last two weeks of a session. *Manual* § 897.

Forms

SPEAKER: Today is Calendar Wednesday, and the Clerk will call the roll of committees.

MEMBER (when his committee is called): Mr. Speaker, by direction of the Committee on _____, I call up the bill H.R. _____.

Note: Calendar Wednesday business may be called up only on formal authorization by the committee. A Member without such authorization may not call up the bill if objection is made. § 6, infra.

SPEAKER: This bill is on the House Calendar. The Clerk will report the bill.

[or, if the bill is on the Union Calendar . . .]

SPEAKER: This bill is on the Union Calendar, and under the rule the House automatically resolves itself into the Committee of the Whole House on the state of the Union, with the gentleman from _____, Mr. _____, in the Chair.

CHAIRMAN: The House is in the Committee of the Whole House on the state of the Union for the [further] consideration of the bill H.R. _____, which the Clerk will report [by title].

Note: When first called up, the bill is read in full unless reading is dispensed with by unanimous consent. If consideration is extended beyond the day, it is read by title when called up on subsequent days.

CHAIRMAN: Under the rule general debate is limited to two hours, and the Chair will recognize the gentleman from _____, Mr. _____ [usually the chairman of the committee], for the hour in favor of the bill and later the gentleman from _____, Mr. _____ [usually the ranking minority member of the committee], for the hour in opposition. The gentleman from _____, is recognized.

§ 2. Business Considered on Calendar Wednesday

Committees called under the Calendar Wednesday rule may call up for consideration any unprivileged bill on either the House or Union Calendar (*Manual* § 897) but not from the Private Calendar (Deschler Ch 21 § 4). There is no priority as between bills on the House or Union Calendar on such days, and a committee may bring up bills from either calendar at will. 7 Cannon §§ 938, 963.

The Calendar Wednesday procedure applies only to bills reported from committee, and not to amendments between the Houses or unreported bills. 98–2, June 28, 1984, p 19770. Another limitation of the rule is that it applies only to nonprivileged public bills. Deschler Ch 21 § 4. A privileged bill cannot be called up under the Calendar Wednesday rule (7 Cannon §§ 932–935), except by unanimous consent (98–2, Jan. 25, 1984, p 357). Such a bill is ineligible for consideration under the Calendar Wednesday rule whether it is reported from the floor or delivered to the Clerk. 7 Cannon § 936.

The purpose of the Calendar Wednesday rule (*Manual* § 897) is to preserve that day for the class of legislation specified by the rule—namely nonprivileged bills. Committee *reports* on bills may be filed on Calendar

Wednesday but they may not be called up for consideration or other action on such days. 7 Cannon § 907.

When Calendar Wednesday business is being considered under the rule, it is not in order:

- To move a change of reference (7 Cannon §§ 884, 2117).
- To call up a conference report (7 Cannon §§ 899–901).
- To offer a motion for recess (*Manual* § 897).
- To call up a privileged bill (7 Cannon §§ 932–934), even though given privileged status by special order (7 Cannon § 935).
- To call up a private bill (Deschler Ch 21 § 4.10).
- To consider business coming over from Tuesday with the previous question ordered (7 Cannon § 890).
- To call up a resolution of inquiry (7 Cannon § 898) or to move to discharge a committee from the consideration of such a resolution (7 Cannon §§ 896, 897).

When a bill otherwise unprivileged is given a privileged status by unanimous-consent agreement or by special order, it is automatically rendered ineligible for consideration under the Calendar Wednesday procedure. 7 Cannon §§ 932–935.

On Calendar Wednesdays, the Speaker ordinarily declines to entertain unanimous-consent requests not connected with Calendar Wednesday business. 7 Cannon §§ 882–888. However, the House may by unanimous consent, prior to the call of committees on Calendar Wednesday, permit a one-minute speech (98–2, Mar. 21, 1984, pp 6187, 6188), allow a bill to be sent to a House-Senate conference (98–2, Mar. 28, 1984, pp 6869, 6873), or permit consideration of a resolution electing a committee chairman (98–2, Jan. 25, 1984, pp 357, 358).

§ 3. — In Committee of the Whole

When a bill on the Union Calendar is called up on Calendar Wednesday, the House automatically resolves into the Committee of the Whole without motion from the floor. 7 Cannon §§ 939–942. When such a bill comes up as the unfinished business on the next Calendar Wednesday when the same committee can be recognized, the House automatically resolves into the Committee of the Whole immediately without waiting for the call (7 Cannon §§ 940, 942; Deschler Ch 21 § 4.26), and debate is resumed from the point at which it was discontinued on the previous Wednesday (7 Cannon § 966).

On rejection by the House of a recommendation by the Committee of the Whole for peremptory disposition of a bill under consideration on Cal-

endar Wednesday, the House automatically resolves into the Committee of the Whole for its further consideration. 7 Cannon § 943.

Resolving into the Committee generally, see COMMITTEES OF THE WHOLE.

§ 4. Privilege and Precedence of Calendar Wednesday Business

No business is in order on Calendar Wednesdays except the call of committees unless the call has been dispensed with as provided for by the controlling rule—Rule XXIV clause 7. *Manual* § 897. See also 7 Cannon § 881. Calendar Wednesday business is privileged matter which may interrupt the daily order of business as specified in Rule XXIV clause 1. *Manual* § 880. It takes precedence over other business privileged under the rules; however, questions involving the privileges of the House and veto messages privileged under the Constitution take precedence over Calendar Wednesday business. Deschler Ch 21 §§ 4.3–4.8. Calendar Wednesday business also yields to questions of privilege (7 Cannon §§ 908–911) and the administration of the oath to Members (6 Cannon § 22). And when the call of committees is completed on Calendar Wednesday, business otherwise in order may be called up on that day. 7 Cannon § 921. See also 103–1, Mar. 31, 1993, p ____.

The call of committees on Calendar Wednesday has precedence over:

- The consideration of conference reports (7 Cannon §§ 899–901).
- Business provided for by special order unless the special order expressly specifies Wednesday and was passed by two-thirds vote (7 Cannon § 773). See also § 11, infra.
- The motion to go into Committee of the Whole to consider revenue and appropriation bills (7 Cannon § 904).
- Business on which the previous question is operating and undisposed of at adjournment on the preceding day (7 Cannon § 890).
- Motions for change of reference to committees (7 Cannon §§ 883, 884).
- Privileged resolutions of inquiry (7 Cannon § 896).
- Contested election cases (7 Cannon § 903).
- Motions to reconsider (7 Cannon § 905).
- Certain procedural propositions relating to impeachment (7 Cannon § 902).
- Budget messages from the President (7 Cannon § 914).
- Senate bills privileged because of similarity to a bill on the House Calendar (7 Cannon § 906).
- Unanimous-consent requests generally (7 Cannon §§ 882–888).

Motions to reconsider may be entered but not considered (7 Cannon § 905), and privileged reports may be presented for printing but without the right to call up for immediate consideration (7 Cannon § 907).

§ 5. The Call of Committees

Committees are called *seriatim* in the order in which they appear in House Rule X (see 7 Cannon §§ 922, 923), the call being limited to those committees which have been elected (7 Cannon § 925). Select committees with legislative jurisdiction are called after standing committees. Deschler Ch 21 § 4. When a committee is reached during a Calendar Wednesday call of committees, it is ordinarily not in order to ask recognition for any purpose other than to call up a bill for consideration. 6 Cannon § 754.

During a call of committees under the rule, a committee may not yield or exchange its order of rotation (7 Cannon § 927), and any committee declining to proceed with consideration of a bill when called on Wednesday loses that opportunity until again called in regular order (7 Cannon § 926).

§ 6. Calling Up Calendar Wednesday Business; Authorization

Generally

The Calendar Wednesday rule permits committees to call up nonprivileged bills from either the House Calendar or the Union Calendar (*Manual* § 897), provided that there has been compliance with other rules of the House requiring that the measure and the report thereon be available for three days prior to consideration (*Manual* § 715). 98–2, May 2, 1984, p 10732; 98–2, Sept. 12, 1984, p 25100.

Calendar Wednesday business may be called up only on formal authorization by the reporting committee. 7 Cannon § 929. The House rule (*Manual* § 713a) requiring the chairman of each committee to take necessary steps to bring reported measures to a vote is sufficient authority for the chairman to call up a bill on Calendar Wednesday (Deschler Ch 21 § 4.16), but any other committee member must obtain specific authorization of his committee to call up a reported bill on Calendar Wednesday (4 Hinds § 3128; 7 Cannon §§ 928, 929). See also 98–2, Feb. 1, 1984, p 1193. Committee authorization to a committee member to ''use all parliamentary means to bring the bill before the House'' is sufficient authorization to the Member to call up the bill on Calendar Wednesday. 8 Cannon § 2217. Authority having been given to one Member to call up a bill, another may not be recognized for that purpose if objection is made. 7 Cannon §§ 928, 929. Only the member authorized by the committee reporting the bill may call up that bill on Calendar Wednesday. Deschler Ch 21 § 4.12. It is within the discretion of the committee to determine which member to authorize to call up the bill. Deschler Ch 21 § 4.15.

Withdrawal

After a bill has been called up on Calendar Wednesday, it may be withdrawn at any time before amendment. 7 Cannon § 930.

§ 7. The Question of Consideration

The question of consideration may be demanded on a bill called up under the Calendar Wednesday rule. Deschler Ch 21 § 4.18. The question is properly raised after the Clerk has read the title of the bill. Deschler Ch 21 § 4.20. The question of consideration is properly raised on a Union Calendar bill in the House before going into Committee of the Whole. 7 Cannon § 952. If the question is decided in the affirmative, the House automatically resolves itself into the Committee of the Whole for the consideration of the bill. Deschler Ch 21 § 4.20.

The refusal of the House to consider a bill called up under the Calendar Wednesday rule does not preclude the bill's being brought up under another procedure, such as pursuant to a rule from the Committee on Rules. Deschler Ch 21 § 4.19.

It is not in order to reconsider the vote whereby the House has declined to consider a proposition under the Calendar Wednesday rule. Deschler Ch 21 § 4.25.

§ 8. Consideration and Debate

In the House

The hour rule for debate applies to House Calendar bills called up in the House on Calendar Wednesday as on other days, and the Member in charge of the bill may move the previous question at any time after debate begins. 7 Cannon §§ 955–957.

In Committee of the Whole

The Calendar Wednesday rule allows not more than two hours general debate on any measure called up on Calendar Wednesday, to be confined to the subject and to be equally divided between those favoring and those opposing. *Manual* § 897. This provision has been construed as applying only in the Committee of the Whole. 7 Cannon § 955. The two hours permitted by the rule may be reduced by the House by unanimous consent to one hour. 98–2, Jan. 25, 1984, pp 357, 358. But time allotted for debate under the rule may not be extended in the Committee of the Whole even by unanimous consent. 7 Cannon § 959. When a bill previously debated is called up for the first time on Calendar Wednesday, consideration may proceed in the

Committee of the Whole as if there had been no previous debate. 7 Cannon § 954.

In recognizing Members to control the time in opposition to the bill, the Chair recognizes minority members of the committee reporting the bill in the order of their seniority on the committee. Deschler Ch 21 § 4.24. They are entitled to prior recognition to oppose it, but if no member of the committee rises to oppose it, any Member may be recognized in opposition. 7 Cannon §§ 958, 959. The bill is read for amendment at the conclusion of an hour in favor of the bill when no one rises for an hour in opposition. 7 Cannon §§ 960, 961.

Amendments

In the Committee of the Whole, amendments may not be offered until the close of the two hours' debate, when the bill is taken up under the five-minute rule and read by section for amendment. See 7 Cannon § 960. Committee amendments are considered first as each section is reached. When the reading of the bill under the five-minute rule has been completed, the Committee rises and reports to the House. See COMMITTEES OF THE WHOLE.

§ 9. — Use of Additional or Subsequent Wednesdays

In its original form the Calendar Wednesday rule was largely ineffective because it permitted extended consideration of bills by a single committee so as to monopolize each Wednesday for many weeks to the exclusion of other committees, sometimes consuming each Wednesday during an entire session. This defect was remedied by the adoption in 1916 of a proviso to the rule which prohibited committees from occupying more than one Wednesday in succession to the exclusion of other committees. 7 Cannon § 881. Today, a committee called under the Calendar Wednesday rule is not entitled to a second Wednesday to complete its business on a bill until the other committees have been called, unless the previous question is operating at adjournment. 8 Cannon § 2680. But the House may by two-thirds vote authorize completion on a subsequent Wednesday of an unfinished bill. See *Manual* § 897. See also 7 Cannon § 946 and 8 Cannon § 2680.

The motion to grant a committee an additional Wednesday under the second proviso of the Calendar Wednesday rule is in order in the House prior to the Wednesday on which the committees are again called. 7 Cannon § 946. The motion is not in order in the Committee of the Whole. See *Manual* § 897.

Any portion of a day is considered an entire day in the apportionment of Calendar Wednesdays to committees. 7 Cannon § 945.

§ 10. Unfinished Business; Effect of Previous Question

Where the previous question has been ordered on a bill on Calendar Wednesday, and the House adjourns, the bill becomes the unfinished business on the next legislative day. 8 Cannon §§ 895, 967; Deschler Ch 21 §§ 4.17, 4.28. Where a quorum fails on ordering the previous question on a bill under consideration on a Calendar Wednesday, and the House adjourns, the vote goes over until the next Calendar Wednesday available to the committee reporting the bill. Deschler Ch 21 § 4.29.

When the House adjourns on Tuesday without voting on a proposition on which the previous question has been ordered, the question does not come up on Wednesday but on Thursday. 7 Cannon §§ 890–894. In one instance, a bill on which the previous question had been ordered at adjournment on Wednesday was taken up as the unfinished business on Thursday and took precedence of a motion to go into the Committee of the Whole for the consideration of a bill privileged by special order. 8 Cannon § 2674.

It is not in order on a regular legislative day to move to postpone consideration of a pending measure to a Calendar Wednesday. 8 Cannon § 2614. A bill postponed from a Wednesday to a subsequent Wednesday becomes unfinished business to be considered when the committee calling it up is called again in its turn. 7 Cannon § 970.

§ 11. Dispensing With Calendar Wednesday

Generally

Calendar Wednesday business may be dispensed with by unanimous consent, normally pursuant to a request made by the Majority Leader during the previous week; but such a request may be entertained at any time prior to the beginning of the call. See Deschler Ch 21 §§ 4.40–4.42. Calendar Wednesday business may also be dispensed with pursuant to motion under the Calendar Wednesday rule. Rule XXIV clause 7. The motion is privileged and precedes District of Columbia business under Rule XXIV clause 8. Deschler Ch 21 § 4.33. Any Member may propose the motion at any time on Wednesday. 7 Cannon § 915; Deschler Ch 21 § 4.31. The motion may also be made and considered on any preceding day. 7 Cannon § 916; Deschler Ch 21 § 4.30. Debate on the motion is limited to 10 minutes, to be divided, five minutes in favor of the motion and five minutes in opposition. 97–2, Sept. 21, 1982, pp 24403, 24404. A two-thirds vote of the Members present is required for its adoption. *Manual* § 897. The motion may not be laid on the table. Deschler Ch 21 § 4.36.

In recognizing a Member for the five minutes in opposition to a motion to dispense with business under the Calendar Wednesday rule, the Speaker extends preference to a member of the committee having the call. Deschler Ch 21 § 4.35.

If there are no bills on the calendar eligible for consideration under the Wednesday call of committees, a motion to dispense with the business in order on that day is not required. 7 Cannon §§ 918–920.

By Special Rule

A special rule that provides merely that a particular bill shall be in order for consideration upon adoption of the special rule, or from day-to-day until disposed of, does not dispense with Calendar Wednesday. 7 Cannon §§ 773, 789. Indeed, the House rules specifically preclude the Committee on Rules from reporting a special rule dispensing with Calendar Wednesday business by less than a two-thirds vote. *Manual* § 729a. However, the Committee on Rules may report a special rule permitting the Speaker to entertain motions to suspend the rules, which could ultimately lead to the suspension of the Calendar Wednesday rule. 8 Cannon § 2267.

Calendars

Research References
4 Hinds §§ 3115–3118
7 Cannon §§ 881–1023
7 Deschler Ch 22 §§ 1, 2
Manual §§ 742–747

§ 1. In General; Kinds of Calendars

The House under its rules maintains various calendars to facilitate the scheduling and consideration of its legislative business. See Rule XIII. These include:

- The House Calendar. This calendar receives referrals of public bills that do not raise revenue or directly or indirectly make or require an appropriation of money or property. *Manual* § 742.
- The Union Calendar. Measures belonging on the Union Calendar are those on subjects which fall within the jurisdiction of the Committee of the Whole. Deschler Ch 22 § 2. Subjects which must be considered in the Committee of the Whole are specified in Rule XXIII clause 3. Bills appropriating money or property are referred to the Union Calendar (*Manual* § 742). The same is true of bills authorizing an undertaking by a governmental agency which will incur an expense to the government, however small. 8 Cannon § 2401.
- The Private Calendar (to which are referred bills of a private character). See PRIVATE CALENDAR.
- The Corrections Calendar (§ 5, infra).
- The Discharge Calendar (to which are referred motions to discharge committees). *Manual* § 747. See DISCHARGING MEASURES FROM COMMITTEES.

These calendars—the Discharge Calendar excepted—consist primarily of lists of measures on which committee action has been completed and which are ready for floor action. They are printed daily and appear in *Calendars of the United States House of Representatives*.

Calendar Wednesday is not strictly speaking a legislative calendar. The term refers to the procedure for the call of committees on Wednesday for the consideration of unprivileged bills on the House and Union Calendars. See CALENDAR WEDNESDAY.

§ 2. Referrals to Calendars

Measures Reported Favorably

Bills that are favorably reported from a committee are referred to the appropriate calendar under the direction of the Speaker unless referred to other committees under clause 5 of Rule X. *Manual* § 743. Public bills favorably reported are first referred either to the Union Calendar or to the House Calendar and those that are not required to be referred to the former are referred to the latter. Deschler Ch 22 § 2.

The reference of a bill to a particular calendar is governed by the text of the bill as referred to committee, and amendments reported by a committee are not considered in making this determination. 8 Cannon § 2392. Amendments to private bills, see BILLS.

Measures Reported Unfavorably

Bills that are adversely reported from committee are not referred to a calendar unless a request to that effect is made by the committee or a Member. Deschler Ch 22 § 1.1. Under the applicable House rule, Members have three days in which to request such a referral. *Manual* § 744. Precedents indicate that adversely reported resolutions also may be referred to a calendar by the Speaker when a timely request is made by a Member pursuant to this rule. 93–2, May 30, 1974, p 16865. Absent such a request, an adversely reported measure is laid on the table. *Manual* § 744. Thereafter, it may be taken from the table and placed on the calendar only by unanimous consent. 6 Cannon § 750.

Privileged measures are excepted from the general rule that only favorably reported bills are referred to a calendar. Adverse reports on privileged resolutions (including resolutions of inquiry) are automatically referred to the proper calendar by the Speaker. 94–2, Sept. 8, 1976, p 29274.

Measures Reported Improperly

A bill that has been improperly reported from a committee is not entitled to a place on the calendar, and should be recommitted. 4 Hinds § 3117.

§ 3. — Erroneous Referrals

A bill that is on the wrong calendar is subject to a point of order when it is called up for consideration. 6 Cannon §§ 746, 747. Such a point of order is untimely if made after consideration of the measure has begun. 7 Cannon § 856.

An error in the referral of a bill to a calendar may be corrected pursuant to motion. Such a motion presents a question of the privilege of the House. 3 Hinds §§ 2614, 2615. But a mere clerical error in the calendar, such as an incorrect date, does not give rise to such a question. 3 Hinds § 2616.

The Speaker has general authority to correct an erroneous reference by him of a reported bill to a calendar, and to transfer the bill to the proper calendar. 7 Cannon § 859; 95–1, Sept. 8, 1977, p 28273; 101–2, Sept. 10, 1990, p ____. Thus, a private bill erroneously referred to the Union Calendar may be transferred to the Private Calendar by direction of the Speaker. 98–2, Apr. 26, 1984, p 10242. The transfer of the bill to the proper calendar may be made effective as of the date of the original reference. Deschler Ch 22 § 1.2; 98–2, Apr. 26, 1984, p 10242. The Speaker may correct such a reference at any time before consideration of the bill begins and while the question of consideration is pending. 6 Cannon § 748.

The authority of the Speaker to correct a calendar reference does not apply where the reference was made by the House itself. 6 Cannon § 749.

§ 4. Discharge From Calendars

Although the Speaker has no specific authority under the House rules to remove a reported bill from the Union Calendar, he may discharge such a bill for reference to another committee pursuant to his general responsibility under Rule X clause 5 to fashion sequential referrals where appropriate. 95–2, Apr. 27, 1978, p 11742; 99–2, June 19, 1986, p 14741. Authority is also given in the Budget Act [§ 401(b)] for the Speaker to discharge a reported bill from the Union Calendar and make a 15-day referral to the Committee on Appropriations of reported bills providing certain new entitlement authority. 95–1, Sept. 8, 1977, p 28153. This authority has sometimes been rendered inoperative under other Budget Act enforcement provisions. See *Manual* § 1007.

§ 5. The Corrections Calendar

In 1995, the House abolished the Consent Calendar and replaced it with the Corrections Calendar. Under new clause 4 of Rule XIII, bills favorably reported from committee and on the House or Union Calendar are also eligi-

ble for placement on the Corrections Calendar. Placement on the calendar is by direction of the Speaker in his discretion (after consultation with the Minority Leader). H. Res. 161, June 14, 1995.

Bills that have been on the calendar for three legislative days may be called up for consideration in the House on the second and fourth Tuesdays of each month. Such bills are debatable for one hour but are not subject to amendment unless offered by the committee of primary jurisdiction or its chairman or his designee. Bills called up under this procedure require a three-fifths vote for passage. *Manual* § 746.

Chamber, Rooms, and Galleries

Research References
5 Hinds §§ 7270–7311
8 Cannon §§ 3632, 3636–3643
1 Deschler Ch 4
Manual §§ 918–922

§ 1. In General; Use of the Hall

The Hall of the House and unappropriated rooms in the House are under the general control of the Speaker. Rule I clause 3. *Manual* § 623. Control of the appropriated rooms in the House wing is exercised by the House itself. 5 Hinds §§ 7273–7279. Resolutions assigning a room to a committee have been considered as privileged. 5 Hinds § 7273.

By House rule (*Manual* § 918), the Hall may be used only for the legislative business of the House, caucus meetings of its Members, and ceremonies in which the House votes to participate. 5 Hinds § 7270. In rare instances, the House has permitted the Hall to be used for ceremonial or special occasions. See 8 Cannon § 3682; Deschler Ch 4 §§ 3.1, 3.4. Members may not entertain guests in the Hall. Deschler Ch 4 § 3.2. Admission to the Hall, see § 2, infra.

Disorderly or disruptive acts in the Capitol are unlawful, and unauthorized demonstrations are prohibited by law. 40 USC § 193f(b)(4). And the unauthorized presence of persons on the floor of either House or in the gallery of either House is prohibited. 40 USC § 193f(b)(1), (2). Admission to the galleries, see § 4, infra. Disorder in the House, see CONSIDERATION AND DEBATE.

§ 2. Admission to the Floor

Generally

The House rules (Rule XXXII) enumerate those persons entitled to be admitted to the floor or rooms leading thereto. *Manual* §§ 919–921b. Among those who may be admitted to the Hall are the President and Vice President,

Judges of the Supreme Court, Members-elect, governors of states, and other named officials. *Manual* § 919.

The rule is strictly enforced during regular meetings, less so on ceremonial occasions (Deschler Ch 4 § 4) or when the House is in recess during a joint meeting with the Senate (91–2, Feb. 24, 1970, p 4546). The Speaker sometimes announces guidelines for enforcement during a recess. During a regular meeting, a point of order will lie to object to the presence of any unauthorized persons (92–2, June 21, 1972, p 21704). Motions or unanimous-consent requests to suspend the rule may not be entertained by the Speaker (Rule XXXII clause 1; 92–2, June 8, 1972, p 20318) or by the Chairman of the Committee of the Whole (5 Hinds § 7285).

The rule governing admissions to the floor permits the presence of heads of departments and foreign ministers. *Manual* § 919. ''Heads of departments'' has been interpreted to mean members of the President's Cabinet, and ''foreign ministers'' is construed to mean the representatives of foreign governments duly accredited to the United States. 5 Hinds § 7283.

Persons who have been held entitled to admission to the floor include Senators, although not for the purpose of addressing the House (Deschler Ch 4 § 4.8), and challengers in election contests, even though they were not candidates in the election in which the sitting Members were elected (Deschler Ch 4 § 4.5). Floor privileges may be claimed for one attorney for a Member-respondent during consideration of a disciplinary resolution reported from the Committee on Standards of Official Conduct. *Manual* § 919.

The Speaker has the authority to exclude an individual who abuses the privileges of the floor. 5 Hinds § 7288. An alleged abuse of the privilege of the floor may be made the subject of an inquiry by a special committee. 5 Hinds § 7287.

Staff; Committee Clerks

By House rule, a Member with an amendment under consideration may be joined on the floor by one person from his staff. This rule also permits the presence of clerks of committees when business from their committee is under consideration. Rule XXXII clause 1. *Manual* § 919.

This rule has been interpreted by the Speaker to allow the presence on the floor of four professional staff members and one clerk from a committee during consideration of that committee's business (92–2, June 8, 1972, p 20318) and to require that such individuals remain unobtrusively by the committee tables (97–2, Aug. 18, 1982, p 21934). The privileges of the floor do not extend to departmental employees assisting committees in the preparation of bills. 6 Cannon § 579. Where several committees are involved in a pending measure, the rule permits authorized majority and minority staff

(up to five persons) from each committee. 97–1, June 26, 1981, p 14574. Floor clerks other than those employed by a committee involved in the bill under consideration are not entitled to the floor. Deschler Ch 4 § 4. The Speaker has announced his intention to strictly enforce the rule to prevent a proliferation of committee staff on the floor. 93–2, Aug. 22, 1974, p 30027; 97–1, Jan. 19, 1981, p 402; 98–1, Jan. 25, 1983, p 224.

Staff permitted on the floor under the rule are not permitted to pass out literature or otherwise attempt to influence Members in their votes. (101–2, Aug. 1, 1990, p ____), nor to applaud during debate (104–1, June 15, 1995, p ____).

Effect of Personal or Pecuniary Interest in Pending Legislation

Although former Members, officers, and certain former employees have access to the floor under the rule (*Manual* § 919), such an individual is not entitled to the privileges of the floor if he (1) has a direct personal or pecuniary interest in legislation under consideration in the House or reported by any committee, or (2) represents any party or organization for the purpose of influencing the disposition of legislation pending before the House or reported by a committee or under consideration in a committee. *Manual* § 921a. See also 95–2, June 7, 1978, p 16625. For regulations issued by the Speaker under this rule, see 95–1, Jan. 6, 1977, p 321; announcement of Speaker Foley, 103–2, June 9, 1994, p ____; announcement of Speaker Gingrich, 104–1, May 24, 1995, p ____..

Secret Sessions

Before a secret session of the House commences, the Speaker may direct that the chamber be cleared of all persons except Members and those officers and employees specified by the Speaker whose attendance on the floor is essential to the functioning of the session. 96–1, June 20, 1979, p 15711. A point of order will not lie against the presence in the chamber of those persons whose attendance on the floor is permitted by the Speaker's directive. 96–1, July 17, 1979, p 19050. See also CONSIDERATION AND DEBATE.

§ 3. Electronic Devices; Signals, Bells, and Clocks

Various electronic devices and computer services are used by the House under the modern practice to expedite quorum calls, votes, and for other purposes. *Manual* § 765a. Resolutions relating thereto are within the jurisdiction of the Committee on House Oversight (formerly House Administration) and are called up as privileged. See 92–1, Nov. 9, 1971, p 40015.

The use of personal electronic office equipment (including cellular phones and computers) on the floor of the House is prohibited by rules adopted in 1995. Rule XIV clause 7.

A legislative bell and light system alerts Members to quorum calls, the taking of certain votes, and other occurrences on the floor. *Manual* § 765. Changes in the system are announced by the Speaker from time to time. The failure of the signal bells to announce a vote does not warrant repetition of the roll call (8 Cannon §§ 3153–3511), nor does such a failure permit a Member to be recorded following the conclusion of the call (75–3, June 9, 1938, p 8662).

Microphones have been placed on the floor of the House for the use of Members. A Member making an appropriate request should use one of the floor microphones so that all Members may hear it. 94–1, Oct. 28, 1975, p 34027. By the same token, the House rules (Rule I clause 2) direct the Speaker to preserve order and decorum in the House, and he is authorized to order the microphones turned off if being utilized by a Member who has not been properly recognized and who is disorderly. 100–2, Mar. 16, 1988, pp 4079 *et seq.*

Where there is a discrepancy in the time shown on the clocks in the House chamber, the Chair relies on the clock on the north wall in deciding when time has expired. 88–2, Feb. 10, 1964, p 2724.

§ 4. Galleries and Corridors

Control over the corridors leading to the House chamber is vested in the Speaker. *Manual* §§ 622, 623. The Speaker may order the corridors cleared during quorum calls and the taking of votes to ensure unimpeded access to the chamber. 96–1, Jan. 15, 1979, p 19. The Speaker preserves order and decorum in the galleries, and in the event of a disturbance, he may order the galleries cleared. *Manual* § 622. The Chairman of the Committee of the Whole may exercise similar power in preserving order in the galleries. *Manual* § 861a.

Guests in the House gallery must maintain order and refrain from manifestations of approval or disapproval of proceedings on the floor, and admonitions may be expressed either by the Speaker (89–2, July 25, 1966, p 16837; 92–2, Jan. 18, 1972, p 8) or by the Chairman of the Committee of the Whole (91–2, May 6, 1970, p 14449). It is also out of order under the rules of the House to refer to visitors in the galleries, even with permission to proceed out of order (Deschler Ch 4 § 5.4), and the Speaker, on his own initiative, may declare such remarks to be out of order (Deschler Ch 4 § 5.3).

§ 5. Photographs; Radio and Television Coverage

Photographs

Under the practice of the House, permission must be obtained before photographs may be taken inside the House chamber. Deschler Ch 4 § 3.5. Official photographs of the House while in session may be permitted by resolution. 88–2, Feb. 20, 1964, p 3224; 94–1, July 14, 1975, p 22575. Ground rules regarding the taking of such pictures may be enforced by the Speaker. 91–1, Jan. 6, 1969, p 145.

Media Coverage of Floor Proceedings

Prior to the 95th Congress, the rules and precedents of the House did not permit public radio and television broadcasts of House proceedings. In 1977, the House adopted a privileged resolution reported from the Committee on Rules to provide a system of closed-circuit viewing of House proceedings and for the orderly development of a broadcasting system. 95–1, Oct. 27, 1977, p 35425. The 96th Congress adopted a rule authorizing and directing audio and visual broadcasting and recording of the proceedings of the House. Rule I clause 9. Under this rule, broadcasts are made over closed-circuit television in House offices, and have been made available to the news media and to cable television systems. Broadcasts made available under the rule may not be used for political purposes, and the use thereof for commercial purposes is restricted. *Manual* § 934c.

In 1984, a question arose as to the authority of the Speaker to require wide-angle television coverage of the House chamber during special-order speeches. In this instance, the Speaker's directive that television cameras covering special-order speeches of the House at the completion of legislative business include periodic wide-angle coverage of the entire House chamber was held to be consistent with the authority conferred upon the Speaker under clause 9 of Rule I to devise and implement complete and unedited audio and visual coverage of the proceedings of the House. 98–2, May 10, 1984, p 11898. More recently, the Speaker has followed a policy under which television cameras would not ''pan'' the chamber during morning hour or special-order speeches. 103–2, Feb. 11, 1994, p ____; 104–1, Jan. 4, 1995, p ____.

Although clause 9(b)(1) of Rule I requires complete and unedited broadcast coverage of the proceedings of the House, it does not require in-House microphone amplification of disorderly conduct by a Member following expiration of his recognition for debate. 100–2, Mar. 16, 1988, pp 4079 *et seq.*

Committees

A. GENERALLY; ESTABLISHING COMMITTEES

B. CHAIRMEN, MEMBERS, AND STAFF; ELECTIONS AND APPOINTMENTS

C. COMMITTEE FUNCTIONS; JURISDICTION AND AUTHORITY

D. PROCEDURE IN COMMITTEES

Research References
4 Hinds §§ 4019–4703
7 Cannon §§ 1721–2317
4 Deschler Ch 17
Manual §§ 669–738

A. Generally; Establishing Committees

§ 1. The Committee System; Standing, Select, and Joint Committees

The Role of Committees

The committees of the House play a dominant role at every stage of the legislative process. The committee system is involved in this process from the time of the initial referral of a bill to the preparation of its final draft at a House-Senate conference. As a general rule, all proposed legislative measures are referred to committees before receiving consideration in the House itself. *Manual* § 446. A committee may approve a measure, report it with or without amendments, rewrite it entirely, report adversely, refuse to consider it, or fail to report the measure at all. (As to discharge procedures, see DISCHARGING MEASURES FROM COMMITTEES).

The role of the committee does not terminate with the reporting of the bill to the House. When a bill reaches the floor, members of the committee reporting it are entitled to prior recognition for the purpose of offering

amendments (see AMENDMENTS), and general debate is generally under the control of its chairman and ranking minority member. See CONSIDERATION AND DEBATE. Finally, members of the reporting committee are often appointed by the Speaker to serve on the conference committee to resolve differences as to the final form of the bill. See CONFERENCES BETWEEN THE HOUSES.

The committee system is as old as the House itself, having been patterned after the English House of Commons, the colonial assemblies, and the Continental Congress. Although during its first quarter century the House relied primarily upon select committees and the Committee of the Whole, the first standing committee dates from 1789. As the 19th century advanced, select committees were converted into standing committees, which grew in number until by 1905 there were no less than 61 of them. Various consolidations, culminating with the adoption of new Rule X in 1995, reduced the number to 19. See H. Res. 6, Jan. 4, 1995.

Standing, Select, and Joint Committees Distinguished

House committees are of three distinct types: (1) standing committees, whose members are *elected* by the House, (2) select committees [also called special committees], whose members are *appointed* by the Speaker, and (3) joint committees, whose members are chosen according to the provisions of the statute or resolution creating them. There are variations on these three categories which are discussed in later sections.

Standing committees (created in the standing rules) routinely receive bills and other measures within their jurisdiction upon referral from the Speaker. (Referral to committees, see INTRODUCTION AND REFERENCE OF BILLS.) Select committees are separately established to consider a particular matter or subject, and may or may not have legislative jurisdiction. See § 12, infra. Joint committees take up matters of concern to both Houses. See § 14, infra.

Select committees are distinguishable from standing committees in that, unless permanently established by the House, they expire when they report finally (4 Hinds §§ 4403–4405), whereas standing committees are not discharged from consideration of a subject within their jurisdiction by reason of having reported thereon. 8 Cannon § 2311.

Committee of the Whole Distinguished

The Committee of the Whole has been described as but a committee of the House (4 Hinds § 4706), although it is not a committee in the customary sense. The Committee of the Whole, unlike regular committees, does not have a fixed membership. All Members of the House may attend and

participate in its deliberations under special rules designed to encourage wide-ranging debate and to expedite legislation. The Committee of the Whole itself has no power to authorize or appoint a committee. 4 Hinds § 4710. Because of its unique role in the procedures of the House, the Committee of the Whole is taken up in a separate article of this work. See COMMITTEES OF THE WHOLE.

Conference Committees Distinguished

Conference committees are used primarily to resolve differences between the House and Senate on measures that have passed the two Houses, and are likewise treated elsewhere. See CONFERENCES BETWEEN THE HOUSES.

Subcommittees

Standing committees have subcommittees which study legislation, hold hearings, and make reports. Such reports are made to the full committee. Subcommittees have no power to report directly to the House, absent specific authority to do so, and are subject to the control of the full committee. *Manual* § 703a.

Commissions

Commissions are analogous to select committees in that they are established to study a particular problem; but a commission is distinguishable from a select committee in that its membership may include private citizens, Members of the House and Senate, and representatives from other branches of government. See, for example, H. Res. 1368, 94–2, creating the Commission on Administrative Review.

Duration of Committees

The committees of the House remain in existence only during the two-year term of the particular Congress which created them. The standing committees of the House are usually reconstituted when one Congress succeeds another, but all House committees spring into existence only after a new House has adopted rules or resolutions specifically creating them anew. Deschler Ch 17 § 1.2 (note).

Select committees expire with the term of the Congress in which they were created (Deschler Ch 17 § 1), or at such earlier date as may be specified in the resolution creating them (Deschler Ch 17 § 5.5). Unless permanently established, a select committee ceases to exist when it finally reports in full on the subject committed to it (4 Hinds § 4403), but may be revived by action of the House in referring a new matter to it (4 Hinds §§ 4404,

4405). A select committee that expires in one Congress may be reconstituted in the next. Deschler Ch 17 § 5.5.

Joint committees established by statute remain in existence beyond the Congress in which they were created unless otherwise provided, although the members thereof must be chosen anew in each Congress. Deschler Ch 17 § 1.

§ 2. Establishing Committees

Standing Committees

Standing committees are ordinarily established with the adoption of the standing rules on opening day for a Congress or subsequently pursuant to a simple resolution reported from the Committee on Rules (Deschler Ch 17 § 2.1), usually by way of amendment to the House rules. Deschler Ch 17 §§ 2.2, 2.3. Adopting rules of a new Congress, see ASSEMBLY OF CONGRESS.

A resolution establishing a new committee during a Congress is called up as privileged and is debatable under the hour rule in the House. Deschler Ch 17 § 2.1. Resolutions from the Committee on Rules are also used to change the name or authority of a standing committee (Deschler Ch 17 § 2.4), or to abolish a committee and transfer its jurisdiction and records to another existing committee (Deschler Ch 17 § 2.5) or to a new committee (Deschler Ch 17 § 2.6).

Select Committees

Select committees are likewise established by a resolution reported from the Committee on Rules. Deschler Ch 17 §§ 5.3, 5.5. In one unusual instance, however, a select committee was created pursuant to a floor amendment (offered to the Committee Reform Amendments of 1974). 93–2, H. Res. 988, Jan. 3, 1975.

A resolution creating a select committee may specify the jurisdiction and powers of the committee (Deschler Ch 17 § 5.2) and may place it under the authority of a standing committee. Deschler Ch 17 § 5.3.

A resolution creating a select committee is reported and called up as privileged, since the Rules Committee may report at any time on rules (*Manual* § 726), and the creation of such a committee is deemed the equivalent of a new rule. Deschler Ch 17 § 5.1. If such a resolution is not reported by the Committee on Rules, it is not privileged, and unanimous consent is necessary to permit its consideration. 95–1, Jan. 4, 1977, p 72. The Rules Committee itself may not report such a resolution as privileged if it contains

provisions outside the jurisdiction of the committee. See Deschler Ch 17 § 1.1 (note).

Special Ad Hoc Committees

Under the earlier practice of the House, special committees to consider a particular matter could be established by way of a motion or other proposition to refer. 4 Hinds §§ 4401, 4402; 5 Hinds §§ 6633, 6634. Thus the House could refer a message of the President to a special committee to be appointed by the Speaker, and at the same time instruct the committee and specify the number of members to be appointed. 5 Hinds § 6633. It was held in this regard that the House need not refer to a special committee already in existence, but could refer to one to be subsequently appointed. 5 Hinds § 6634. On occasion an ad hoc select committee has been established by a resolution called up as a question of privileges of the House. 102–2, Apr. 9, 1992, p ____.

Under the modern practice, special ad hoc committees are established pursuant to Rule X clause 5(c), adopted in 1975. Under this rule, the Speaker was given authority to refer a matter to a special ad hoc committee appointed by him to consider that matter and report thereon to the House. The appointment must be made with the approval of the House from the members of the committees having legislative jurisdiction. *Manual* § 700. Pursuant to this authority, the Speaker may with the approval of the House appoint a special ad hoc committee to consider a particular measure (94–1, Apr. 22, 1975, p 11261), or a particular bill and similar subsequent bills (95–1, Jan. 11, 1977, p 894). A resolution authorizing the Speaker to take such action is privileged when offered from the floor at the Speaker's request. 94–2, Jan. 26, 1976, p 876; 95–1, Jan. 11, 1977, pp 894–898; 95–1, Apr. 21, 1977, pp 11550–56.

Joint Committees

Joint committees are created pursuant to the passage of a bill or the adoption of a resolution. Deschler Ch 17 § 7. A bill is commonly used where the creation of the committee is merely one part of a comprehensive legislative plan. Joint resolutions are used where the sole purpose of the measure is to create the committee and vest it with jurisdiction. 6 Cannon § 371; Deschler Ch 17 §§ 7.4, 7.5. A concurrent resolution may be used for this purpose (4 Hinds §§ 4409, 4410; 6 Cannon § 380; Deschler Ch 17 §§ 7.1, 7.2), but any joint committee created by concurrent resolution must expire (unless reconstituted) with the Congress in which it was created. See 4 Hinds § 4409.

A resolution establishing a joint committee, if reported by the Committee on Rules, is called up as privileged by that committee. Deschler Ch 17 § 7.1. But such a resolution may not be reported as privileged if it contains an authorization for appropriations. Deschler Ch 17 § 7.5. Debate on the resolution is under the hour rule. Deschler Ch 17 § 7.1.

Commissions

Commissions are ordinarily created by statute. See, for example, the Citizens' Commission on Public Service and Salaries (2 USC § 351). The Commission on Administrative Review, created in the 94th Congress, was established by a House resolution. 94–2, July 1, 1976, p ____.

§ 3. Committee Expenses; Funding

Authorization for the payment of committee expenses for a particular Congress is obtained pursuant to ''one primary expense resolution'' for each committee (the Appropriations Committee excepted). Rule XI clause 5. *Manual* § 732a. The request for such authorization is made to the Committee on House Oversight, which has jurisdiction over such expenditures. Rule X clause 1(h). The primary expense resolution is reported to the House by the committee with an accompanying report containing information as to the anticipated activities of the committee in question. Beginning in the 104th Congress, biennial funding was instituted (Rule XI clause 5(a); *Manual* § 732cc).

Authorization for the payment of additional committee expenses not covered by the primary expense resolution may be obtained pursuant to one or more additional resolutions—called supplemental expense resolutions. Rule XI clause 5(b).

The primary and supplemental expense resolutions which are used under the rules to provide funds for a single committee are subject to a one-calendar-day layover requirement. Rule XI clause 5.

Funds for the Committee on Appropriations are appropriated pursuant to statute (31 USC § 22a).

B. Chairmen, Members, and Staff; Elections and Appointments

§ 4. In General; Membership and Seniority

Standing and Select Committees Distinguished

Until 1911, the members and the chairmen of the standing and select committees of the House were generally appointed by the Speaker, although in rare instances a committee chose its own chairman. See 4 Hinds §§ 4524 *et seq*. Since 1911, standing committee chairmen and members have been elected by the House. The election takes place after the majority and minority party caucuses have perfected their lists and presented separate election resolutions for approval. 4 Hinds § 4513; 8 Cannon § 2201; *Manual* § 317. The Speaker has retained the authority—based on longstanding tradition and formally vested in him by the House rules in 1880—to appoint select committees. *Manual* §§ 701e, 701g.

Under the modern practice, the election of members and chairmen to standing committees is actually a three-step procedure. First, committee assignments are prepared by a selection committee—sometimes called a committee on committees—of each party caucus. Second, the recommendations of the selection committee are approved by the caucus, which may vote by secret ballot. Third, the nominations of the caucuses are subsequently brought before the House as privileged resolutions. Rule X clause 6(a)(1); *Manual* § 701a.

Electing Chairman

Pursuant to nominations submitted by the majority party caucus, one member of each standing committee is elected as its chairman at the commencement of each Congress. *Manual* § 701c. Beginning with the 104th Congress, a Member's service as chairman is limited to three consecutive Congresses. Rule X clause 6(c). Nominations for chairmen are submitted to the House for its approval in the election resolution. Deschler Ch 17 § 8.1. Such a resolution is called up as privileged by the chairman of the selection committee designated to recommend committee assignments (Deschler Ch 17 § 8.2) or, more recently, by the chairman of the majority party caucus (Deschler Ch 17 § 8.7 (note)), usually as part of a resolution electing all majority members to those committees.

In the event of a permanent vacancy in the chairmanship, the House elects a successor (*Manual* § 701c) pursuant to privileged resolution. This procedure is followed when a vacancy is created on a standing committee by the death of its chairman (Deschler Ch 17 § 8.3) or after a chairman has

resigned (Deschler Ch 17 §§ 8.5, 8.6). In the temporary absence of the chairman, the member next in rank in order named in the election of the committee acts as chairman. *Manual* § 701c.

Where the chairman is disabled and unable to carry out the responsibilities of the Chair, the House may, in the election resolution, provide for a delegation of powers and duties to a vice chairman until further ordered by the House. H. Res. 43, 102–1.

Election of Members

Resolutions electing Members to standing committees have traditionally been offered from the floor (8 Cannon § 2171) and called up as privileged at the direction of the party organization. 8 Cannon §§ 2179, 2182; 97–1, Jan. 28, 1981, pp 1140, 1142. Each party's resolution, if adopted, elects *en bloc* those members from that particular party to the various standing committees. Deschler Ch 17 § 9.1. Such a resolution is not divisible. *Manual* § 791. But it is debatable and subject to amendment (8 Cannon § 2172) until such time as the previous question is ordered (8 Cannon § 2174).

Beginning in the 104th Congress, no Member may serve simultaneously as a member of more than two standing committees or four subcommittees unless approved by the House. Rule X clause 6(b)(2).

Seniority

Committee seniority is shown by the order in which the Members' names are listed in the election resolution. Deschler Ch 17 § 11.1. A resolution electing a Member to a committee may include the designation of his rank on the committee (Deschler Ch 17 § 9.6), and may be made retroactively effective as of a prior date. (Deschler Ch 17 § 9.16.)

§ 5. Numerical Composition of Committees; Party Ratios

Committee Size

Today, the only standing committee of the House that is limited as to its size by the standing rules is the Committee on the Budget. Rule X clause 1(e). Under the modern practice, the sizes of other committees of the House (Standards Committee excepted) are negotiated by the Majority and Minority Party Leaders at the direction of their respective party organizations. Deschler Ch 17 § 9. The size of each committee is ultimately determined by the number of Members elected to each committee pursuant to Rule X clause 6(a). The size of the Committee on Standards is set by law at 7-7. See § 803(b) of the Ethics Reform Act of 1989, Pub. L. No. 101–194, *Manual* § 698.

Party Ratios

Party ratios on committees are derived from the allocation of majority party and minority party representation on those committees. Such ratios are normally determined through negotiations between the majority and minority party leadership. Historically, the party ratios on most standing committees has tended to reflect the relative membership of the two parties in the House as a whole. Deschler Ch 17 § 9.4. Sometimes, however, the membership of a committee is equally divided between the majority and minority parties where bipartisan deliberations are considered essential. See, for example, Rule X clause 6(a), requiring that one-half of the members of the Committee on Standards of Official Conduct be from the majority party and one-half from the minority party.

Disproportionate party ratios on committees may also be traced to the rules of the party caucus. Deschler Ch 3 § 9. Moreover, some House committees, such as the Rules Committee, have traditionally reflected disproportionate ratios in favor of the majority party. See, for example, 8 Cannon § 2184.

§ 6. The Chairman's Role

The powers and duties of the committee chairmen are derived from custom and from the rules of the House. The chairman of a committee:

- Presides over committee meetings. *Manual* § 317.
- May administer oaths to witnesses in hearings in the committee. *Manual* § 718; 2 USC § 191. (In one instance, the chairman of an investigating committee administered the oath to himself and testified. 3 Hinds § 1821.)
- May punish breaches of order and decorum by censure and exclusion from investigative hearings. *Manual* § 712.
- May authorize and issue subpenas when the power to do so has been delegated to him by the committee. *Manual* § 718.
- Fixes, within certain guidelines, the salaries of staff. *Manual* § 735.
- Submits reports of his committee to the House, even though he may not have concurred therein. 4 Hinds §§ 4670, 4671. However, a committee may order its report to be made by some other member (4 Hinds § 4669) or even by a member of the minority party (4 Hinds §§ 4672, 4673).
- Submits privileged reports to the House from the floor. *Manual* § 418.

- Is in charge of the pending bill in the House and is entitled at all stages to prior recognition for allowable motions intended to expedite it (2 Hinds §§ 1452, 1457; 6 Cannon §§ 296, 300), unless he is opposed to the bill, in which case he must yield prior recognition to a member of his committee who favors the bill (2 Hinds § 1449).
- Is entitled to prior recognition when Senate amendments to the bill are debated. 2 Hinds § 1452.

§ 7. Committee Employees and Staff

The employment of committee staff is governed by the House rules (*Manual* §§ 733a *et seq*.) and by statute (see, for example, 5 USC §§ 5315, 5316, setting permissible rates of staff pay).

The House rules place a limit on the number of professional staff members which may be appointed to a standing committee (the Committee on Appropriations excepted), and on the number of professional staff members which may be selected by the minority. *Manual* §§ 733a–734b.

The Appropriations Committee is subject to a separate rule permitting the appointment, in addition to a clerk and assistants for the minority, of such staff as are determined by majority vote to be necessary. Rule XI clause 6(d).

C. Committee Functions; Jurisdiction and Authority

§ 8. Legislative Jurisdiction

Generally; Referrals and Rereferrals

The legislative jurisdiction of each standing committee is specified and defined by Rule X. *Manual* §§ 669–691. Areas of legislative interest have been divided under Rule X into distinct subject-matter classifications, with jurisdiction over each being allocated to a standing committee. The Speaker refers bills and other matters to committees pursuant to the jurisdiction of each committee as defined by Rule X, taking into account any relevant precedents. A bill may be referred to more than one committee where its text involves subject matter assigned to different committees. *Manual* § 700. Beginning in the 104th Congress, the Speaker is required to indicate a primary committee of jurisdiction. Rule X clause 5(c); *Manual* § 700. Referrals generally, see INTRODUCTION AND REFERENCE OF BILLS.

The rule of the House which specifies and defines the jurisdiction of each standing committee is said to be mandatory on the Speaker in referring public bills and on the Members in referring private bills. *Manual* § 669. But when the House itself refers a bill, it may send it to any committee

without regard to the rules of jurisdiction (4 Hinds § 4375; 5 Hinds § 5527; 7 Cannon § 2131), and jurisdiction is thereby conferred (4 Hinds §§ 4362–4364; 7 Cannon § 2105).

The committees are the creatures of the House and exercise no authority or jurisdiction beyond that specifically conferred by the rules or by special authorization of the House itself. 7 Cannon § 780. However, the House may confer jurisdiction on a committee by the adoption of a special order from the Committee on Rules. 7 Cannon § 780. And a bill may be originated by a committee which has been given jurisdiction to do so by order or rule of the House. 4 Hinds § 3365. Jurisdictional authority, in addition to that specified in Rule X, may be vested in a committee pursuant to:

- A resolution enlarging the jurisdiction of a committee (91–2, July 8, 1970, p 32136), or authorizing it to study and report on a particular matter (3 Hinds § 1753; 86–2, Apr. 21, 1960, p 8546).
- A change in the rules of the House by adoption of a resolution from the Committee on Rules. 91–2, July 8, 1970, p 32136.
- A motion to rerefer or recommit.

The erroneous reference of a public bill, if it remains uncorrected, gives jurisdiction (4 Hinds §§ 4365–4371; 7 Cannon § 2108), but such is not the case with respect to a private bill (4 Hinds §§ 3364, 4382–4389) unless the reference is made by action of the House itself (4 Hinds §§ 4390, 4391; 7 Cannon § 2131).

Informal Agreements

Questions relating to the jurisdiction over a subject by two or more committees are sometimes resolved pursuant to an informal agreement or a memoranda of understanding between the committees involved. Typically, the legislative initiative is assumed by the committee having the primary concern over the subject, with the understanding that the other committee(s) involved will have an opportunity to consider that portion of the legislation within its cognizance. 91–1, June 18, 1969, p 16301. (See also 96–2, Mar. 25, 1980, pp 6405, 6406, 6408–10, where a memoranda of understanding—on energy measures—was entered into by the chairmen and members of six different committees.) Pursuant to such an agreement, a committee may waive its claim to review a particular bill with the understanding that it will not constitute a permanent surrender of jurisdiction over the matter. 86–1, Aug. 14, 1959, p 15895; 88–1, July 15, 1963, p 12525.

Points of Order

The Speaker's referral of a bill is not subject to a point of order. In a committee, points of order based on the lack of jurisdiction of a committee

over a particular measure must be timely raised. Once a committee has reported a bill and it has been placed on the appropriate calendar, a point of order that the bill was improperly referred comes too late. Deschler Ch 17 § 26; *Manual* § 854. Likewise, a point of order against specific language of a paragraph in a bill, on the grounds that its subject is within the jurisdiction of another committee, does not lie once the bill has been reported. Deschler Ch 17 § 27.9. That point of order would lie in committee during a markup if that portion of the bill is read for amendment. Where a reported bill is under consideration in Committee of the Whole, questions relating to the jurisdiction of the reporting committee may not then be considered. 4 Hinds § 4372.

The Speaker may decline to speculate as to what committee will have jurisdiction over a particular bill until it has been examined. Deschler Ch 17 § 27.2.

§ 9. Oversight Jurisdiction

Generally

The oversight function of the House arises from its duty to exercise continuous watchfulness over the administration and execution of the laws by the departments and agencies of the federal government. Legislative oversight as a continuing function was given to all standing committees by the Legislative Reorganization Act of 1946 (60 Stat. 812), which provided that each standing committee ''shall exercise continuous watchfulness'' over administrative agencies, and by the Legislative Reorganization Act of 1970 (84 Stat. 1140), which required periodic reports by committees on their oversight activities. The general requirement (Rule X clause 2) that House standing committees exercise oversight functions was made part of the House rules in 1971 (H. Res. 5, Jan. 22, 1971).

General and Special Oversight Distinguished

The House rules impose both general and special oversight responsibilities on its standing committees. General legislative oversight is performed by all standing committees (except for Budget). *Manual* § 692a. Special oversight functions are given to certain standing committees. *Manual* § 693.

Role of Committee on Government Reform and Oversight

The Committee on Government Reform and Oversight is directed by House rule to review and study, on a continuing basis, the operation of government activities at all levels with a view to determining their economy and efficiency. *Manual* § 692b. This committee, previously named the Committee on Government Operations, is the investigative committee of the

House with respect to general oversight of the federal government. The committee can investigate matters within the jurisdiction of other standing committees.

§ 10. Investigative Jurisdiction and Authority

Standing Committees

Prior to 1975, it was the practice of the House to authorize committee investigations pursuant to the adoption of resolutions reported from the Committee on Rules. With certain exceptions, each committee had to obtain such authorization in each Congress. Deschler Ch 15 § 1. Today, each standing committee is authorized, under the standing rules of the House, to conduct such investigations as it considers necessary or appropriate in carrying out the jurisdictional responsibilities given to it under Rule X. *Manual* § 703b. And in carrying out its duties, each committee and subcommittee is authorized by Rule XI to hold hearings and to subpena witnesses or compel the production of documents. *Manual* § 718. As to the issuance and enforcement of subpenas, see § 24, infra.

Select or Joint Committees

Although, as noted above, standing committees and their subcommittees have general authority under the rules of the House to conduct investigations on subjects within their jurisdiction under Rule X, a select or joint committee must be given specific authority to undertake an investigation. Such authority may be given pursuant to:

- A statute conferring investigative powers (see, for example, 26 USC § 8022, conferring investigative duties on the Joint Committee on Internal Revenue Taxation).
- A joint or concurrent resolution (see 79–1, Jan. 18, 1945, H. Con. Res. 18, and 90–2, July 12, 1968, H.J. Res. 1, establishing a joint committee to investigate crime).
- A standing rule of the House. (See, for example, Rule XLVIII clause 7(d), *Manual* § 944a, relating to the investigative authority of the Select Committee on Intelligence).
- A resolution creating an investigatory committee. (See, e.g., the Select Committee on Assassinations, 94–2, Sept. 17, 1976.

Scope; Limitations

The investigative power that is exercised by the House through its committees is inherent in the power to make laws. *Watkins* v *United States*, 354 US 178 (1957). ''A legislative body cannot legislate wisely or effectively,'' it is reasoned, ''in the absence of information respecting the conditions

which the legislation is intended to affect or change.'' *McGrain Daugherty*, 273 US 135 (1927). *Eastland* v *United States Servicemen's Fund*, 421 US 491 (1975).

This investigative power is very broad, encompassing inquiries concerning the administration of existing laws as well as the need for proposed legislation. It extends to studies of social, economic, or political problems, as well as probes into departmental corruption, inefficiency, or waste at the federal level. *Watkins* v *United States*, 354 US 178 (1957). Although broad, this power of investigation is not unlimited. It may be exercised only in aid of the ''legislative function.'' *Kilbourn* v *Thompson*, 103 US 168 (1881). It is said that Congress has no ''general'' power to inquire into private affairs, and that the subject of inquiry must be one ''on which legislation could be had.'' *McGrain* v *Daugherty*, 273 US 135 (1927).

Since 1952, the courts have declined to presume the existence of a legislative purpose, and have narrowly construed resolutions granting authority to committees to conduct investigations. *United States* v *Rumely*, 345 US 41 (1952). The investigative power cannot be used to expose merely for the sake of exposure, nor to inquire into matters which are within the exclusive province of one of the other branches of government or which are reserved to the states. Deschler Ch 15 § 1.

A further requirement for the validity of a committee investigation is that it must have been expressly or impliedly authorized in accordance with congressional procedures. Deschler Ch 15 § 1. Thus, the courts have refused to convict a witness for contempt arising out of a subcommittee investigation where that inquiry had not been approved by a majority of the parent committee, as was required by the committee rule. *Gojack* v *United States*, 384 US 702 (1966).

The courts will not look to the motives which may have prompted a congressional investigation (*Watkins* v *United States*, 354 US 178 [1957]) nor will it question the wisdom of the investigation or its methodology. *Doe* v *McMillan*, 412 US 306 (1973). The very nature of the investigative function is such that it may take the searchers up some ''blind alleys'' and into nonproductive enterprises. To be a valid legislative inquiry, there need be no predictable end result. *Eastland* v *United States Servicemen's Fund*, 421 US 491 (1975).

Obstructing Committee Investigation

A federal statute provides criminal penalties for those who corruptly influence, obstruct, or impede ''due and proper'' congressional inquiry. 18 USC § 1505. Indictments under § 1505 have been upheld despite contentions that the committee violated its own rules and those of the House. *U.S.* v

Poindexter, D.D.C. 1989, 725 F Supp 13. *U.S.* v *Mitchell*, C.A. 4 (Md.) 1989, 877 F2d 294.

§ 11. Standing Committees

Standing committees were not used extensively during the earliest Congresses. It was the general practice of the House to refer matters to a Committee of the Whole to develop the primary objectives of a proposal, and then to commit such matters to select committees to draft specific bills.

With the beginning of the 19th century, standing committees began to proliferate. By mid-century, the House had 34 standing committees and by 1900 it had 58. Still more standing committees were added during the early 1900's, but in the 1920's the House consolidated numerous committees and again vested in the Committee on Appropriations jurisdiction over all general appropriation bills. 7 Cannon § 1741. Further reductions in the number of committees in the House were made by the Legislative Reorganization Act of 1946 (60 Stat. 812), referred to hereinafter as simply ''60 Stat. 812.'' By dropping relatively inactive committees and by merging those with similar functions and jurisdiction, the Act reduced the total number of standing committees in the House from 44 to 19.

In 1995, the House again reorganized its committee system, abolishing three committees and altering the jurisdiction of several others. H. Res. 6, Jan. 3, 1995. At that time the House also adopted a rule requiring that, with certain exceptions, no standing committee may have more than five subcommittees. Rule X clause 6(d).

The standing committees of the House, with their antecedent committees, are shown in the table below. This table provides citations to relevant statutes or precedents and to the authority for legislative jurisdiction and/or oversight functions, where applicable.

Standing Committees (104th Cong.)

JURISDICTION, OVERSIGHT FUNCTION, AND ANTECEDENTS

STANDING COMMITTEES (104TH CONG.)	ANTECEDENT COMMITTEES
Agriculture Est. 1820; 4 Hinds § 4149 Continued, 1947, 60 Stat. 812 Legislative jurisdiction, *Manual* § 670 Oversight functions, *Manual* § 692b	

Standing Committees (104th Cong.)—Continued

JURISDICTION, OVERSIGHT FUNCTION, AND ANTECEDENTS

STANDING COMMITTEES (104TH CONG.)	ANTECEDENT COMMITTEES
Appropriations	
Est. 1865; 4 Hinds § 4032 Legislative jurisdiction, *Manual* § 671a Oversight functions, *Manual* § 692a	Ways and Means (in part), 1802
Banking and Financial Services	
Est. 1995; H. Res. 6 Legislative jurisdiction, *Manual* § 672 Oversight functions, *Manual* § 692a	Ways and Means (in part), 1802 Banking and Currency, 1865 Coinage, Weights and Measures, 1867 Banking, Currency and Housing, 1974 Banking, Finance and Urban Affairs, 1977
Budget	
Est. 1974; 88 Stat. 299 Legislative jurisdiction, *Manual* § 673a Oversight functions, *Manual* §§ 693, 695	
Commerce	
Est. 1995; H. Res. 6 Legislative jurisdiction, *Manual* § 674 Oversight functions, *Manual* §§ 692a, 693	Commerce and Manufacturers, 1795 Coinage, Weights and Measures, 1867 Interstate and Foreign Commerce, 1892 Commerce and Health, 1975 Interstate and Foreign Commerce, 1975 Energy and Commerce, 1980
Economic and Educational Opportunities	
Est. 1995; H. Res. 6 Legislative jurisdiction, *Manual* § 675 Oversight functions, *Manual* §§ 692a, 693	Education, 1867 Labor, 1883 Education and Labor, 1947
Government Reform and Oversight	
Est. 1995; H. Res. 6 Legislative jurisdiction, *Manual* § 676	Ways and Means, 1802 District of Columbia, 1808

Standing Committees (104th Cong.)—Continued

JURISDICTION, OVERSIGHT FUNCTION, AND ANTECEDENTS

STANDING COMMITTEES (104TH CONG.)	ANTECEDENT COMMITTEES
Oversight functions, *Manual* §§ 692a, 692b	Public Expenditures, 1814 State, Treasury, War, Navy, and Post Office, 1816 Justice, 1874 Agriculture, 1889 Commerce and Labor, 1905 Expenditures in the Executive Departments, 1927 Post Office and Civil Service, 1947 Government Operations, 1952
House Oversight	
Est. 1995; H. Res. 6 Legislative jurisdiction, *Manual* § 677a Oversight functions, *Manual* §§ 692a, 697a	Enrolled Bills, 1789 Elections, 1794, 1895 Accounts, 1805 Mileage, 1837 Disposition of Executive Papers, 1889 Ventilation and Acoustics, 1893 Memorials, 1929 House Administration, 1947
International Relations	
Est. 1995; H. Res. 6 Legislative jurisdiction, *Manual* § 678 Oversight functions, *Manual* § 693	Foreign Affairs, 1822, 1979 International Relations, 1975
Judiciary	
Est. 1813; 4 Hinds § 4054 Continued, 1947, 60 Stat. 812 Legislative jurisdiction, *Manual* § 679a Oversight functions, *Manual* § 692a	Claims, 1794 Patents, 1837 Revision of the Laws, 1868 War Claims, 1883 Immigration and Naturalization, 1893 Internal Security, 1969
National Security	
Est. 1995; H. Res. 6 Legislative jurisdiction, *Manual* § 680 Oversight functions, *Manual* §§ 692a, 693	Military Affairs, 1822 Naval Affairs, 1822 Militia, 1835 Armed Services, 1947
Resources	
Est. 1995; H. Res. 6	Public Lands, 1805

Standing Committees (104th Cong.)—Continued

JURISDICTION, OVERSIGHT FUNCTION, AND ANTECEDENTS

STANDING COMMITTEES (104TH CONG.)	ANTECEDENT COMMITTEES
Legislative jurisdiction, *Manual* § 681 Oversight functions, *Manual* §§ 692a, 693	Private Land Claims, 1816 Indian Affairs, 1821 Territories, 1825 Mines and Mining, 1865 Irrigation of Arid Lands, 1893 Insular Affairs, 1899 Interior and Insular Affairs, 1951 Natural Resources, 1993
Rules	
Est. 1880; 4 Hinds § 4321 Mandated by law, 1947, 60 Stat. 812 Legislative jurisdiction, *Manual* §§ 682a Oversight functions, *Manual* § 693	Rules (select committee), 1789
Science	
Est. 1995; H. Res. 6 Legislative jurisdiction, *Manual* § 683 Oversight functions, *Manual* § 692a	Merchant Marine and Fisheries, 1887 Astronautics and Space Exploration (select Committee), 1958 Science and Astronautics, 1958 Science and Technology, 1985 Science, Space, and Technology, 1987
Small Business	
Est. 1975; 93–2, H. Res. 988 Legislative jurisdiction, *Manual* § 684 Oversight functions, *Manual* §§ 692a, 693	Small Business (permanent select committee), 1971 Small Business (select committee), 1941
Standards of Official Conduct	
Est. 1967; H. Res. 418 Legislative jurisdiction, *Manual* § 685 Oversight functions, *Manual* § 692a	Standards and Conduct (select committee), 1966
Transportation and Infrastructure	
Est. 1995; H. Res. 6 Legislative jurisdiction, *Manual* § 686	Public Buildings and Grounds, 1837 Mississippi Levies, 1875

Standing Committees (104th Cong.)—Continued
JURISDICTION, OVERSIGHT FUNCTION, AND ANTECEDENTS

STANDING COMMITTEES (104TH CONG.)	ANTECEDENT COMMITTEES
Oversight functions, *Manual* § 692a	Rivers and Harbors, 1883 Merchant Marine and Fisheries, 1887 Roads, 1913 Flood Control, 1916 Public Works and Transportation, 1975
Veterans' Affairs Est. 1947; 60 Stat. 812 Legislative jurisdiction, *Manual* § 687 Oversight functions, *Manual* § 692a	Pensions and Revolutionary Claims 1813 Revolutionary Pensions, 1825 Invalid Pensions, 1831 World War Veterans' Legislation, 1924
Ways and Means Est. 1802; 4 Hinds § 4020 Continued, 1947, 60 Stat. 812 Legislative jurisdiction, *Manual* § 688 Oversight functions, *Manual* § 692a	Ways and Means (select committee), 1789

§ 12. Select Committees

Generally

Select committees were used extensively by the House during the early Congresses. In the Jeffersonian era, it was a common practice to refer each proposal to a select committee created to draft the appropriate legislative language for the measure. *Manual* § 401. By the Third Congress, 350 select committees had been named. But as standing committees came to be recognized as the most appropriate forum for the development of legislation, the use of select committees declined steadily. By the 23d Congress, the number of select committees had been reduced to 35. By the 104th Congress, only the Permanent Select Committee on Intelligence remained. See Rule XLVIII.

Select committees identified as ''permanent'' are reconstituted in each Congress on adoption of the rules of the House.

Select committees have been created primarily: (1) to investigate conditions or events; (2) to study and report on matters with a view toward subsequent legislative action; (3) to report specific legislative proposals to the

House; and (4) to supervise certain routine housekeeping functions. Deschler Ch 17 § 6. See also Guidelines for the Establishment of Select Committees, Committee on Rules, 98–1, Feb. 1983.

Investigative Committees

In the modern era of the House, select committees have been used primarily to investigate and report on a particular subject. During the 82d Congress, for example, a select committee was established to explore the activities of tax-exempt foundations, and to determine whether such foundations had been subsidizing un-American activities. 82–2, H. Res. 561. During the same Congress, a select committee was appointed to investigate the circumstances surrounding the Katyn Forest massacre of more than 15,000 Polish officers during World War II. 92–1, H. Res. 390. More recently, select investigative committees have inquired into the status of Americans missing in action in Southeast Asia (94–1, H. Res. 335), into the assassinations of President Kennedy and Dr. Martin Luther King, Jr. (94–2, H. Res. 1540; 95–1, H. Res. 222), and into covert arms transactions with Iran (100–1, H. Res. 12, Jan. 7, 1987).

These precedents suggest that a select committee may be created for purely investigative purposes. However, as is pointed out elsewhere, all committee investigations must be undertaken in furtherance of a constitutionally assigned function of Congress; the congressional inquiry must be related to and in furtherance of a legislative function of Congress. Deschler Ch 15 § 1. Generally, see § 10, supra.

Committees to Study and Report Recommendations

Select committees have been established to study a particular subject and report its recommendations as a basis for further action by the House or by standing committees. For example, in recent years, select committees have been established to study and report on export controls (87–1, H. Res. 403), government research programs (88–1, H. Res. 504), and on professional sports (92–2, H. Res. 1186). Although without authority to report legislation, these committees have often been directed to assess the adequacy of existing laws, and, if necessary, to make legislative recommendations.

Committees With Legislative Authority

Although most select committees have been authorized to make legislative recommendations, few have been empowered, until recent years, to report legislation directly to the House. Deschler Ch 17 § 6. In 1955, a select committee was created to study and report on the benefits provided to dependents of deceased and former members of the armed services, and ''to

prepare such legislation as it may consider appropriate to carry out such recommendations.'' 84–1, H. Res. 35. Similarly, in the 93d Congress, the House established the Select Committee on Committees to study the committee system of the House, and to report to the House ''by bill, resolution, or otherwise.'' 93–1, H. Res. 132. In the 95th Congress, a Select Committee on Ethics was created and authorized to report certain measures. 95–1, H. Res. 383. The House has also established a Permanent Select Committee on Intelligence with legislative authority over the CIA and other intelligence agencies. 95–1, H. Res. 658.

Committees With Housekeeping Functions

Select committees have been established to supervise certain routine service functions of the House such as the Select Committee on the House Beauty Shop (95–1, H. Res. 1000), the Select Committee on the House Recording Studio (Pub. L. No. 84–624, 1956), the Select Committee on the House Restaurant (95–1, H. Res. 472), and the Select Committee to Regulate Parking on the House Side of the Capitol (95–1, H. Res. 282).

§ 13. — Particular Uses of Select Committees

The House has established more than 20 select committees since passage of the Legislative Reorganization Act of 1946. The table below identifies some of these committees for purposes of illustration. The table shows these committees by name (or paraphrase thereof), dates of creation and termination, and authority, including legislative authority. With the two exceptions noted—Campaign Expenditures and Small Business—the table excludes those committees existing prior to 1947 which were subsequently reconstituted.

Select Committees

COMMITTEE	JURISDICTION—INVESTIGATIVE AUTHORITY	REPORTING AUTHORITY
Aging Est. Jan. 3, 1975; 93–2, H. Res. 988 Termination: Jan. 5, 1993 (*Manual* § 702)	Problems of the older American; income maintenance, housing, and health; welfare programs	To report annually to the House; no legislative authority

Select Committees—Continued

COMMITTEE	JURISDICTION—INVESTIGATIVE AUTHORITY	REPORTING AUTHORITY
Astronautics and Space Exploration Est. Mar. 25, 1958; 85–2, H. Res. 496 Termination: July 21, 1958; became standing Committee on Science and Astronautics	All aspects and problems relating to the exploration of outer space; resources, personnel, equipment, and facilities; legislation	To report to the House, by bill or otherwise
Assassinations Est. Sept. 17, 1976; 94–2, H. Res. 1540 Termination: Jan. 3, 1979	Circumstances surrounding the death of John F. Kennedy and the death of Martin Luther King, Jr.	To report to the House on the result of its investigation (see H. Rept. No. 95–1828); no legislative authority
Campaign Expenditures Est. May 29, 1928; 70–1, H. Res. 232 Termination: Reconstituted by each Congress until 1973	Election disputes; electoral fraud; excessive campaign expenditures of presidential and/or congressional candidates	Reporting authority varied from Congress to Congress
Chemicals, Pesticides, and Insecticides Affecting Foods Est. June 20, 1950; 81–2, H. Res. 323 Termination: Jan. 3, 1953	Chemicals, compounds, and synthetics in the production of food products; health factors; the agricultural economy; toxic residues; effect on soil and vegetation	To report to the House on its investigation with recommendations for legislation (see H. Rept. No. 82–2182); no legislative authority
Children, Youth and Families Est. Sept. 29, 1982, 97–2, H. Res. 421 Reestablished by each Congress through 102–2.	Income maintainance; health; nutrition; education; welfare; employment	To report to the House on the results of its investigations; no legislative authority

Select Committees—Continued

COMMITTEE	JURISDICTION—INVESTIGATIVE AUTHORITY	REPORTING AUTHORITY
Committees Est. Jan. 31, 1973; 93–1, H. Res. 132 Termination: Dec. 20, 1974; reestablished 1979 (H. Res. 118); records transferred to Committee on Rules, Apr. 1, 1980	Rules X and XI of the rules of the House; committee structure; number and size of committees; jurisdiction; committee procedure; meetings, staffing, and facilities	To report to the House by bill, resolution, or otherwise (see H. Rept. No. 96–866)
Communist Aggression Est. July 27, 1953; 83–1, H. Res. 346 Termination: Dec. 31, 1954	Seizure of Latvia and Estonia by the U.S.S.R.; treatment of the Baltic peoples during this period	To report to the House on its study together with recommendations (see H. Rept. No. 83–2650); no legislative authority
Congressional Operations Est. Mar. 28, 1977; 95–1, H. Res. 420 Termination: Jan. 3, 1979	Organization and operation of the U.S. Congress; cooperation between the Houses; relationship with other branches of government	To report recommendations on subjects specified (see H. Rept. No. 95–1843); no legislative authority
Congressional Pages Est. Sept. 30, 1964; 88–2, H. Res. 847 Termination: Jan. 4, 1965	General welfare and education of congressional pages	To report on the results of its investigations (see H. Rept. No. 88–1945); to make recommendations
Crime Est. May 1, 1969; 91–1, H. Res. 17 Termination: June 30, 1973	All aspects of crime in the United States; its elements, causes, and extent; reciprocity of information; urban crime	To report on its investigation with recommendations (see H. Rept. No. 93–358); no legislative authority

Select Committees—Continued

COMMITTEE	JURISDICTION—INVESTIGATIVE AUTHORITY	REPORTING AUTHORITY
Energy		
Est. Apr. 21, 1977; 95–1, H. Res. 508 Termination: Jan. 3, 1979; jurisdiction transferred to Energy and Commerce, 97th Cong.	Message of the President dated Apr. 20, 1977, and other communications relating thereto; bills or resolutions sequentially referred thereto	To report to the House by bill or otherwise (see H. Rept. No. 95–543)
Ethics		
Est. Mar. 9, 1977; 95–1, H. Res. 383 Termination: Jan. 3, 1979	Certain bills and resolutions relating to Rules XLIII–XLVII of the House; regulations relating thereto; advisory opinions	To report to the House on the measure specified (see H. Rept. No. 95–1837); to report regulations; to recommend legislation
Export Controls		
Est. Sept. 7, 1961; 87–1, H. Res. 403 Termination: May 31, 1962	The Export Control Act of 1949; assessment of accomplishments under that Act; improvements in administration and enforcement; congressional oversight	To report on its investigation together with any recommendations (see H. Rept. No. 87–1753); no legislative authority
Foreign Aid		
Est. July 22, 1947; 80–1, H. Res. 296 Termination: May 3, 1948	Basic needs of foreign nations and peoples; relief in terms of food and clothing; resources and facilities; agencies	To report to the House as deemed appropriate; no legislative authority
Government Research		
Est. Sept. 11, 1963; 88–1, H. Res. 504 Termination: Jan. 3, 1965	Research programs of federal agencies; expenditures for research programs; costs of government research	To report its findings to the House with recommended legislation (see H. Rept. No. 88–1143)

Select Committees—Continued

COMMITTEE	JURISDICTION—INVESTIGATIVE AUTHORITY	REPORTING AUTHORITY
Hunger Est. Feb. 22, 1984; 98–2, H. Res. 15 Reestablished each Congress through 102–2	International programs; world food security; malnutrition; food production and distribution; agribusiness role	To conduct studies and make recommendations as to possible legislation
Intelligence Est. Feb. 19, 1975; 94–1, H. Res. 138 Termination: Feb. 11, 1976; became permanent select committee, July 14, 1977, H. Res. 658 (*Manual* § 944a)	Proposals concerning the intelligence and intelligence-related programs and activities of the U.S. Government; oversight; proposed legislation and other matters relating to the CIA	To report to the House on the nature and extent of intelligence activities of U.S. departments and agencies by legislation or otherwise (see H. Rept. No. 94–833)
Katyn Forest Massacre Est. Sept. 18, 1951; 82–1, H. Res. 390 Termination: Dec. 22, 1952	The massacre of thousands of Polish officers in the Katyn Forest in territory then under the control of the U.S.S.R.	To report to the House on completion of its hearings (see H. Rept. No. 82–2505); no legislative authority
Lobbying Activities Est. Aug. 12, 1949; 81–1, H. Res. 298 Termination: end of the 81st Cong.	Lobbying activities intended to influence legislation; activities of federal agencies intended to influence legislation	To submit reports on the results of its study (see H. Rept. No. 81–3239); no legislative authority
Narcotics Abuse and Control Est. July 29, 1976; 94–2, H. Res. 1350 Reestablished each Congress through 102–2	International traffic in narcotics; prevention; enforcement; organized crime; drug abuse; treatment; rehabilitation	To report to the House on its investigations; no legislative authority
Newsprint Est. Feb. 26, 1947; 80–1, H. Res. 58 Termination: Dec. 31, 1948	Need for adequate supplies of newsprint and related products; production possibilities and prospects	To submit reports with recommendations (see H. Rept. No. 80–2471); no legislative authority

Select Committees—Continued

COMMITTEE	JURISDICTION—INVESTIGATIVE AUTHORITY	REPORTING AUTHORITY
Offensive and Undesirable Literature Est. May 12, 1952; 82–2, H. Res. 596 Termination: Dec. 31, 1952	The extent to which books, magazines, and comic books contain immoral, obscene, or otherwise offensive matter; availability through the U.S. mails; adequacy of existing laws	To report to the House with recommendations, including recommendations for legislation (see H. Rept. No. 82–2510); no legislative authority
Outer Continental Shelf Est. Apr. 12, 1975; 94–1, H. Res. 412 Termination: Jan. 3, 1979; succeeded by another select committee on the same subject (96–1, H. Res. 53), which terminated July 31, 1980	A bill relating to the management of oil and natural gas in the Outer Continental Shelf; marine and coastal environments; certain related matters on this subject on referral to it by the Speaker	To report the bill and other legislation referred to it; transmit its findings and make a full report to the House (see H. Rept. No. 96–1214)
Population Est. Sept. 28, 1977; 95–1, H. Res. 70 Termination: end of the 95th Cong.	Causes of changing population conditions; population characteristics relative to limited resources; population planning; global population-related issues	To report on the results of its investigation (see H. Rept. No. 95–1842); no legislative authority
Professional Sports Est. May 18, 1976; 94–2, H. Res. 1186 Termination: Jan. 3, 1977	Need for legislation with respect to professional sports	To report to the House on the results of its inquiry (see H. Rept. No. 94–1786); no legislative authority
Right of Member To Be Sworn In Est. Jan. 10, 1967; 90–1, H. Res. 1 Termination: Feb. 23, 1967	The right of Adam Clayton Powell (N.Y.) to be sworn in in the 90th Congress and to a seat therein	To report to the House within five weeks (see H. Rept. No. 90–27); no legislative authority

Select Committees—Continued

COMMITTEE	JURISDICTION—INVESTIGATIVE AUTHORITY	REPORTING AUTHORITY
Small Business Est. Dec. 4, 1941; 77–1, H. Res. 294 Reconstituted each Congress until 1970; became a standing committee (H. Res. 988), 1975	Assistance to small business; small business protection; financial aid; small business participation in federal procurement	Reported to the House on results of its investigations; had no legislative authority prior to becoming a standing committee
Standards and Conduct of Members Est. Oct. 19, 1966; 89–2, H. Res. 1013 Termination: Dec. 27, 1966; standing Committee on Standards of Official Conduct created Apr. 13, 1967	Rules or regulations necessary or desirable to ensure proper standards of conduct by Members and by officers or employees of the House; reporting of statutory violations	To make recommendations to the House by report or resolution
Survivors' Benefits Est. Aug. 4, 1954; 83–2, H. Res. 549 Termination: Jan. 15, 1956	Benefits provided under federal law for surviving dependents of deceased members and former members of the armed forces	To prepare such legislation; to report on the results of its investigation (see H. Rept. No. 83–9282)
Tax-exempt Foundations and Organizations Est. Apr. 4, 1952; 82–2, H. Res. 561 Termination: Dec. 16, 1954	Educational and philanthropic foundations and related organizations exempt from federal income taxation; use of foundations	To report to the House on the result of its investigation (see H. Rept. No. 82–2681); no legislative authority
Transactions on Commodity Exchanges Est. Dec. 18, 1947; 80–1, H. Res. 404 Termination: Dec. 31, 1948	Purchases and sales of commodities; commodities for future delivery; activities of federal agencies and individuals therein as affecting the price of commodities	To report to the House on completion of its investigation (see H. Rept. No. 80–2472); no legislative authority

Select Committees—Continued

COMMITTEE	JURISDICTION—INVESTIGATIVE AUTHORITY	REPORTING AUTHORITY
U.S. Military Involvement in Southeast Asia Est. June 8, 1970; 91–2, H. Res. 976 Termination: July 6, 1970	All aspects of U.S. military involvement in Southeast Asia	To report on its investigation (see H. Rept. No. 91–1276); no legislative authority
U.S. Servicemen Missing in Action in Southeast Asia Est. Sept. 11, 1975; 94–1, H. Res. 335 Termination: Mar. 13, 1977	U.S. servicemen identified as missing in action; recovery of bodies of known dead; international inspection teams	To report to the House on its investigation (see H. Rept. No. 94–178); no legislative authority
White County Bridge Commission Est. May 25, 1955; 84–1, H. Res. 244 Termination: Apr. 25, 1956	Financial position of the White County Bridge Commission; monies received and expenditures made; anticipated toll-free use	To report to the House with recommendations (see H. Rept. No. 84–2052); no legislative authority
World War II Veterans Est. Aug. 28, 1950; 81–2, H. Res. 474 Termination: Feb. 2, 1951	Abuses in education, training and loan guarantee programs of World War II veterans	To report on the results of its investigation (see H. Rept. No. 2501); no legislative authority

§ 14. Joint Committees

Generally

Joint committees are composed of Members from both Houses. They have been in use since the earliest days of the Republic. Jefferson notes that joint committees were used by the two Houses of the English Parliament. *Manual* § 325. In the First Congress, a joint committee was used to make arrangements for the inauguration of President Washington. 3 Hinds § 1986. Joint standing committees were soon formed on the Library (4 Hinds

§ 4337) and Printing (4 Hinds § 4347), and these committees exist to this day. *Manual* §§ 985, 986.

Joint committees, or committees of the House and Senate acting jointly, have been used to investigate problems relating to immigration (4 Hinds § 4415), to resolve a dispute relating to the electoral count (3 Hinds § 1953), to investigate the revision and codification of the laws (4 Hinds § 4410), and to study the organization and operation of the Congress (2 USC §§ 411–417).

Jurisdiction, Functions, and Duties

Joint committees are used for study and investigation, supervision and oversight, and sometimes for purely ceremonial activities. They are primarily advisory in nature. They seldom have legislative jurisdiction, and do not ordinarily have the power to report legislative measures for consideration. They generally function in areas beyond the jurisdiction of any particular committee of either House. Deschler Ch 17 § 7. Joint committees may report to both Houses if so directed (4 Hinds §§ 4421, 4422), or to either House (4 Hinds § 4432; 7 Cannon § 2167).

A joint committee created by concurrent resolution may be instructed by the two Houses acting concurrently or by either House acting independently. 4 Hinds § 4421. However, a joint committee created by statute is not susceptible to control by one House and its duties may not be enlarged or diminished by either House acting independently. 7 Cannon § 2164.

Composition; Voting

Recent joint committees have featured an equal number of Members from both Houses, with the chairmanship alternating between the House and Senate, and with each member having one vote. Deschler Ch 17 § 7.

The table below shows the major joint committees that were established during the post-1946 era, their composition, and their jurisdiction and functions:

Joint Committees

Committees	Jurisdiction and Functions
Atomic Energy (18 mbrs) Est. 1946; 42 USC § 2251 House mbrs: 9 Senate mbrs: 9 Termination: Jan. 4, 1977	Development, use, and control of atomic energy; to report legislation and make recommendations within its jurisdiction; legislative jurisdiction abolished, H. Res. 5, 95–1, 1977

Joint Committees—Continued

Committees	Jurisdiction and Functions
Congressional Operations (10 mbrs) Est. 1970; 2 USC §§ 411–417 House mbrs: 5 Senate mbrs: 5 Inactive since 94th Cong. Select Committee on Congressional Operations created, 95–1, H. Res. 420	Identification of court proceedings affecting Congress; organization and operation of the Congress; supervision of the Office of Placement and Management; no legislative jurisdiction
Defense Production (10 mbrs) Est. 1950; 50 USC App § 2161 House mbrs: 5 Senate mbrs: 5 Termination: No appointments after Sept. 30, 1978	Review of programs established by the Defense Production Act of 1950; federal emergency preparedness and mobilization policy; integrity of defense contracts and the procurement process; to report to the House and Senate on its studies, with recommendations
Economic (20 mbrs) Est. 1946; 15 USC § 1021 House mbrs: 10 Senate mbrs: 10 (*Manual* § 983)	Economic Report by the President; means of promoting national policy on employment; short-term and medium-term economic goals; to report to Budget Committees and to House and Senate
Housing (14 mbrs) Est. 1947; H. Con. Res. 104 House mbrs: 7 Senate mbrs: 7 Termination: 80th Cong.	Housing needs in U.S.; building material shortages; building costs; building codes and zoning laws; housing loans and insurance; veterans' preferences; findings to be reported to the House and Senate
Internal Revenue Taxation (10 mbrs) Est. 1926; 26 USC § 8002 House mbrs: 5 Senate mbrs: 5 (*Manual* § 984)	Operation and effects of federal system of internal revenue taxation; reports to the Committee on Ways and Means, and, in its discretion, directly to the House
Library (10 mbrs) Est. 1806; 2 USC § 132b House mbrs: 5 Senate mbrs: 5 (*Manual* § 985)	Management and expansion of the Library of Congress; rules and regulations for the government of the Library; development of Botanic Gardens; gifts for the benefit of the Library; statues and other works of art in the Capitol

Joint Committees—Continued

Committees	Jurisdiction and Functions
Organization of the Congress (24 mbrs) Est. 1965; S. Con. Res. 2 1992; H. Con. Res. 192 House mbrs: 12 Senate mbrs: 12 (*Manual* § 986a)	Organization and operation of Congress; relationship between the two Houses and between the Congress and other branches of government; committees; reports to the House and Senate
Printing (10 mbrs) Est. 1846 House mbrs: 5 Senate mbrs: 5 (*Manual* § 986)	Inefficiencies or waste in the printing, binding, and distribution of government publications; arrangement and style of the Record; printing of the legislative program for each day; listing of committee meetings and hearings
Washington Metropolitan Problems Est. 1957; H. Con. Res. 172 Termination: 86th Cong.	Growth and expansion of the District of Columbia and its metropolitan area; effectiveness of agencies and instrumentalities concerned therewith; to report to the House and Senate

D. Procedure in Committees

§ 15. Committee Rules; Applicable House Rules

Generally

The procedures which House committees are required to follow are prescribed by the rules of the House (*Manual* § 703a), by Jefferson's Manual §§ 704b, 938, and by the written rules which are adopted by each standing committee (*Manual* § 704a). Standing committees and subcommittees are expressly made subject to the rules of the House ''so far as applicable'' (*Manual* § 703a), and each standing committee must adopt written rules not inconsistent therewith (*Manual* § 704a).

Committees have historically adopted rules under which they function for each Congress. 1 Hinds § 707; 3 Hinds §§ 1841, 1842; 8 Cannon § 2214. The adoption of such rules by each committee was made mandatory in 1971. Such rules must be published in the *Congressional Record* within 30 days after the committee is elected. *Manual* § 704a. If a committee meets pursuant to a rule which has not been published, the proceedings may be

held insufficient to support a perjury conviction for alleged false testimony given to that committee. *U.S.* v *Reinecke*, 524 F2d 435, 1975.

Points of Order

A point of order does not ordinarily lie in the House against consideration of a bill by reason of defective committee procedures occurring prior to the time the bill is ordered reported to the House. *Manual* § 704b. Thus, a point of order that a measure was ordered reported in violation of a committee rule requiring advance notice of the committee meeting will not lie in the House—the interpretation of committee rules being within the cognizance of the committee and not the House. 93–2, July 22, 1974, p 24437; 95–2, Oct. 12, 1978, p 36382.

On the other hand, if the procedure objected to was one which is in direct violation of the rules of the House (see *Manual* § 713c), or where those rules specifically permit the raising of the objection, a point of order may lie in the House, resulting in the recommitment of the bill. *Manual* § 704b. For example, a point of order against a measure on the ground that the hearings on such measure were not conducted in an open meeting as required by the rules may be raised in the House by a committee member if the point of order was timely made and improperly overruled or not properly considered in committee. *Manual* § 708.

A deficiency in a reporting requirement may also be the subject of a point of order in the House. (*Manual* § 713 c, d, e, f, g). A committee report that erroneously reflects the information required under Rule XI—that committee reports reflect the total number of votes cast for and against any public measure or matter and any amendment thereto and the names of those voting for and against (*Manual* § 713d)—may be subject to a point of order. 104–1, Jan. 19, 1995, p ____.

§ 16. Records, Files, and Transcripts; Disclosure and Disposition; Member Access

Generally; Voting Records

Each committee must keep a complete record of all committee action. *Manual* § 706a. A meeting or hearing transcript must include, under new Rule XI clause 2(e)(1), a substantially verbatim account of remarks actually made. All committee records and files must be kept separate from the office records of the member serving as chairman. *Manual* § 706c.

The record of committee action must include a record of the votes on any question on which a roll call vote is demanded, and the result of each such vote must be made available by the committee for inspection by the

public. *Manual* § 706a. In addition, committee reports must include all record votes on motions to report and on amendments offered during mark-up. *Manual* § 713d.

Members' Right of Access; Disclosure

The records and files of a committee are considered the property of the House, to which all House Members have access, although exceptions are made for certain records of the Committee on Standards of Official Conduct (*Manual* § 706c) and of the Select Committee on Intelligence (*Manual* § 944a). However, such files may not be brought into the well of the House if the committee has not authorized such action. 86–2, June 3, 1960, p 11820. Moreover, a Member's right of access to committee files does not entitle him to make photostat copies of such files. 85–1, Aug. 14, 1957, p 14737. The clause allowing access to committee records does not necessarily apply to records within the possession of the executive branch which the members of the committee have been allowed to examine under limited conditions at the discretion of the agency. 96–2, July 31, 1980, p 20765. In implementing the House rule permitting access by Members to committee files, committees may prescribe regulations to govern the manner of access, such as requiring examination of files only in committee rooms. *Manual* § 706c.

Use of Information Obtained in Executive Session

While all Members have access to committee records under the rule, testimony or evidence taken in an executive session of a committee is under the control and subject to the regulation of the committee and, under a separate provision of the rules (*Manual* § 712), cannot be released or made public without the consent of the committee. 87–1, June 26, 1961, p 11233. Thus, while a Member's right of access may allow him to examine executive session materials in committee rooms, it does not permit him to copy or take personal notes from such materials, to keep such notes in his personal office files, or to release such materials to the public without the consent of the committee or subcommittee. 95–1, Dec. 6, 1977, p 38470. Evidence taken in executive session of a committee may later be made public by vote of the committee. Deschler Ch 17 § 22.2. This action may be taken by the committee even with respect to evidence or testimony taken in executive session because it tended to degrade, defame, or incriminate. A committee has the right to make such information public at a later time and may, by vote of the committee, do so. Deschler Ch 17 § 22.3.

Evidence received in executive session by vote of a quorum should be presumed to remain as executive session records until a quorum at a valid

meeting votes to release them or to make the evidence public; the chairman has no unilateral authority, not possessed by any other member, to release such material. The rule that a majority of the committee shall constitute a quorum for closing a meeting has been construed to require that a majority be present to release or make public evidence received in a closed meeting. *Manual* § 712.

The rules prohibit the public disclosure of complaints or information received by the Committee on Standards of Official Conduct except as authorized by that committee. *Manual* § 698.

Disposition of Committee Records

The House may adopt a resolution providing for the disposition of the records and files of a select or other committee. It may require that the files be held intact and turned over to a newly created committee with similar jurisdiction. Deschler Ch 17 § 19.3. In the absence of such disposition by the House, all documents referred to a committee, together with evidence taken by the committee, must under the House rules be delivered to the Clerk of the House within three days after the final adjournment of Congress. *Manual* § 932.

Under Rule XXXVI, an order of the House is required for the release of noncurrent records of the House. 102–1, Mar. 22, 1991, p ____.

Reference in Debate to Transcripts or Minutes

Under early decisions of the House, it was not in order in debate to refer to the proceedings of a committee except as had been formally reported to the House. 5 Hinds §§ 5080–5083; 8 Cannon §§ 2485–2493; Deschler Ch 17 § 20.1. It had been held that a Member might not use a transcript of an open committee meeting in debate in the House where the matter had not been reported to the House. Deschler Ch 17 § 20.2. The rationale for the early decisions was to protect the confidentiality and independence of committee proceedings, and to permit flexibility and compromise in committee deliberations. 8 Cannon § 2491. Today, however, the rules require that committee meetings be open to the public unless properly closed by vote of the committee, and transcripts of committee proceedings are widely available; these considerations mitigate against the application of the rule of nondisclosure to meetings and hearings which are open to the public. Deschler Ch 17 § 20.1; *Manual* § 360. On the other hand, it is clear that the rule protecting committee proceedings from disclosure in House debate is applicable to executive session proceedings. 8 Cannon § 2493; Deschler Ch 17 § 20. Thus, it has been held not in order in debate in the House to refer to or quote from the minutes of an executive session of a

committee, unless the committee has voted to make such proceedings public. 90–1, Apr. 5, 1967, p 8411. And the precedents clearly prevent reference in debate to committee actions which impugn the motives of committee members, whether or not by name. 77–1, Feb. 11, 1941, p 894.

§ 17. Meetings

Regular Meetings; Calling Additional Meetings

Standing committees must fix regular meeting days. *Manual* § 705. These meeting days may be either on a weekly, biweekly, or monthly basis (*Manual* § 407) and standing committees must meet at least once a month. Additional meetings may be called by the chairman as he may deem necessary, and a mechanism exists which allows a majority of the committee to require that a special meeting be held to consider a particular measure or matter. *Manual* § 705. Where a committee has a fixed date to meet, a quorum of the committee may convene on that date without call of the chairman and transact business regardless of his absence. 8 Cannon § 2214. In the absence of the chairman, the ranking majority member presides at the meeting. *Manual* § 705.

Open or Closed Meetings

All committee or subcommittee meetings of a business nature, including those for the markup of legislation, must be open to the public, including the media, unless the committee, in open session with a majority present, votes to close all or part of the remainder of the meeting on that day pursuant to Rule XI clause 2(g)(1). If the meeting is closed, no person other than members of the committee and such staff and departmental representatives as they may authorize may be present. *Manual* § 708.

§ 18. — Consideration and Debate; Voting

Generally; Motion Practice

Committees generally conduct their business under the five-minute rule and may employ the ordinary motions and procedures which are in order in the House under Rule XVI clause 4, as well as those procedures which are in order in the House as in the Committee of the Whole. *Manual* §§ 704b, 782. These include:

- The reading for amendment by section as in the Committee of the Whole and the reading of the measure and amendments thereto in full. *Manual* § 704b.
- Limiting the time for debate (4 Hinds § 4573) and the motion to limit debate under the five-minute rule (*Manual* § 704b).

- The motion for the previous question. See *Manual* § 804.
- Voting by the yeas and nays. 4 Hinds § 4572.
- The motion to refer. See *Manual* § 787.
- The motion to lay on the table (3 Hinds § 1737; 4 Hinds § 4568); but tabling an amendment also carries the bill to the table.
- The motion to reconsider. 4 Hinds §§ 4570, 4571.
- The taking of an appeal from a decision of the Chair. 4 Hinds § 4569.
- The motion to recess from day to day. *Manual* § 703a.

Proxy Voting

Proxy voting in committees, once permitted under certain conditions, was banned in the 104th Congress under House rules. Rule XI clause 2(f).

§ 19. Hearings

Generally; Types of Hearings

The three most common types of hearings held by the committees of the House are: (1) legislative hearings, which are held to consider the enactment of a measure into law, and which provide a forum where information and opinions on the measure can be presented; (2) investigative hearings, designed to inform the House as to activities which may call for legislation; and (3) oversight hearings, which are inquiries that invoke the investigative powers of the House as overseer of federal programs and operations. (Nomination hearings are heard before the Committee on the Judiciary. See *Manual* § 256.)

Investigative or oversight hearings have included such well-known historical landmarks as the Credit Mobilier Corporation bribery charge investigation of 1872 (2 Hinds § 1286), the Un-American activities investigations beginning in the 1930's (Deschler Ch 15 § 1.32), and the investigation of covert arms transactions with Iran in 1988 (100–1, H. Res. 12).

Although all three types of hearings share certain common characteristics, the House rules contain procedures which are unique to each category. See, for example, *Manual* § 712, setting forth rules governing procedures at investigative hearings.

Announcement of Hearings

As of the 104th Congress, chairmen of committees must announce a hearing at least one week in advance, although the chairman and ranking minority member acting jointly, or the committee by majority vote with a meeting quorum present, may determine that there is good cause to begin the hearing sooner, in which case it must make the announcement at the earliest possible date. The announcement must be published in the *Daily Di-*

gest and entered into the committee scheduling service of the House Information Systems. *Manual* § 708. The Committee on Rules is exempted from this requirement.

§ 20. — Hearings as Open or Closed

Closing Hearings

Committee hearings must be open to the public unless the committee or subcommittee, in open session and with a majority present, determines by roll call vote that all or part of the hearing on that day should be closed because of one of the permissible reasons for closing stated in Rule XI clause 2(g)(2). Permissible reasons include national security, the compromise of sensitive law enforcement information, or where testimony might incriminate, defame or degrade a person. Certain committees may close pursuant to this rule for one additional day of hearings; specified committees may close for up to five days. *Manual* § 708.

Evidence Tending to Defame, Degrade, or Incriminate

The House rules require that certain procedural steps be taken whenever it is asserted that evidence before a commmittee at an investigative hearing may tend to defame, degrade, or incriminate. While two members may constitute a quorum for the taking of testimony, more members may be present. A majority of those present may vote to continue the testimony in executive session. If the hearing is to continue as open, a quorum of the committee or subcommittee must be present to entertain a motion that the evidence is in fact not defamatory, incriminating or degrading. Such a motion requires a majority for adoption. An opportunity to appear voluntarily must be afforded to the witness in either case. *Manual* § 712. If a witness appears in response to a subpena and, when called, asks on proper grounds for an executive session, the committee must determine whether the testimony will tend to defame, degrade, or incriminate, even though the witness may have ignored a previous opportunity to appear voluntarily to testify. See 89–2, Oct. 18, 1966, pp 27439–95. But the proper assertion must be made by the witness to the committee. If he leaves the hearing room without making any statement other than that he refuses to testify, the committee is not obligated to go into executive session, since the proceedings have not reached the point where the witness has demanded that the committee determine whether the testimony would tend to degrade, defame, or incriminate. 89–2, Oct. 18, 1966, pp 27439–48, 27481–85. The determination that evidence or testimony may tend to degrade, defame, or incriminate a person lies with the

committee and not with the witness. See 89–2, Oct. 18, 1966, pp 27439–48, 27481 *et seq*.

A point of order may be raised against a privileged report of a committee relating to the refusal of a witness to testify on the ground that the committee had violated the rule relating to the receiving of degrading or incriminating testimony in executive session. 89–2, Oct. 18, 1966, pp 27486 *et seq*.

§ 21. Quorum Requirements

Generally; Meetings

It is a routine practice of the committees of the House to ascertain the presence of the appropriate quorum before proceeding to business. 8 Cannon § 2222. Historically, a majority of a committee constituted a quorum for the transaction of business. *Manual* § 409; 4 Hinds §§ 4540, 4552.

In the 84th Congress, the House gave its committees the right to set the number of Members required to be present for the taking of testimony at a hearing, but mandated the presence of at least two Members. H. Res. 151, Mar. 23, 1955. In the 95th Congress, committees (except for Appropriations, Budget and Ways and Means) were allowed to fix the quorum for the conduct of business, other than the reporting of a measure, at not less than one-third of a committee's membership. H. Res. 5, Jan. 4, 1977.

Current minimum quorum requirements for committees of the House are as follows:

ACTION	MINIMUM QUORUM	RULE XI CLAUSE 2
To report a measure or recommendation	A majority of committee, ''actually present''	(l)(2) *Manual* § 713c
To authorize and issue a subpena	A majority of the committee	(m)(2) *Manual* § 718
To close a meeting or hearing	A majority of the committee	(g)(1) *Manual* § 708
To make public evidence taken in executive session	A majority of the committee	(k)(5) *Manual* § 712
To take evidence or testimony in open session after assertion that it defames, degrades or incriminates	A majority of the committee	(k)(5) *Manual* § 712

ACTION	MINIMUM QUORUM	RULE XI CLAUSE 2
To take testimony or receive evidence at hearing	Two members	(h)(1) *Manual* § 709
To close a hearing where assertion of defamatory testimony or evidence is made	Two members	(k)(5) *Manual* § 712
To take any action ''other than reporting''	One-third of membership	(h)(2) *Manual* § 709

§ 22. — In Ordering a Report to the House

Generally; ''Rolling'' Quorums

A standing committee cannot validly report a measure unless the report was authorized at a formal meeting of the committee with a quorum present. 8 Cannon §§ 2220–2222; Deschler Ch 17 § 23.2. The report is not valid unless authorized with a quorum of the committee actually present at the time the vote is taken. *Manual* § 713d. A poll of committee members by telephone will not suffice. Deschler Ch 17 § 23.2.

In 103d Congress, the rules were amended to permit a so-called ''rolling quorum'' by allowing a majority to be deemed present if the committee records showed that a majority responded on a roll call vote on the motion to report in question. H. Res. 5, Jan. 5, 1993, p ____. This language was dropped from the rules in 1995, thus restoring the previous requirement that a ''majority of the committee be actually present'' at the time a measure is ordered reported. The requirement that a majority be actually present at the time the measure is reported from a committee means that a majority must be contemporaneously assembled when the question is put or at some point while the vote is taken. Unlike a House floor vote during which Members may come and go during the course of a vote, the committee quorum rule, absent the old ''rolling quorum'' latitude, means a committee can no longer simply leave a vote open until a sufficient number of Members have responded to their names. See 104–1, Jan. 5, 1995, p ____.

While Speakers have indicated that committee members may come and go during the course of the vote if the roll call indicates that a quorum was present (8 Cannon § 2222), where it is admitted that a quorum was not in the room at any time during the vote and the committee transcript does not

show a quorum acting as a quorum, the Chair will sustain the point of order. 8 Cannon § 2212).

A point of no quorum pending a committee vote on ordering a measure reported may provoke a quorum call to obtain the presence of a majority of the committee in the committee room. *Manual* § 713d.

The absence of a quorum at the time a ''clean'' bill is ordered reported gives rise to a point of order even though the chairman had been previously instructed by the committee to report the bill. See 93–1, July 23, 1973, pp 25476 *et seq*.

Suspension of Quorum Requirement

Where a bill is being considered under suspension of the rules, a point of order will not lie against the bill on the ground that a quorum was not present when the bill was reported from committee. Deschler Ch 17 § 24.8.

§ 23. ——Points of Order

Generally

Unless a point of order is raised, the House assumes that reports from committees are authorized with a quorum present. Deschler Ch 17 § 23. Quorum issues raised by a point of order are often determined on the basis of information in the report or supplied by the chairman of the committee in question (84–2, July 9, 1956, p 12199; 95–2, Oct. 12, 1978, p 36382) and the Speaker may question him as to the circumstances of the meeting and the number of committee members present at that meeting. Deschler Ch 17 § 23.5. Where the chairman admits that the bill was reported when a quorum was not present the point of order against the bill on that ground will be sustained. Deschler Ch 17 § 25.2. If the point of order is sustained, the bill is automatically recommitted. Deschler Ch 17 §§ 23.2, 25.2.

Timeliness

A point of order that a bill was reported from a committee in the absence of a quorum is properly raised in the House when the bill is called up for consideration (Deschler Ch 17 § 24.2) or pending a vote on a motion that the House resolve itself into the Committee of the Whole for the consideration of the bill. Deschler Ch 17 § 24.4. It has been ruled that such a point of order comes too late if raised:

- After consideration of the bill has begun in the House. 8 Cannon § 2223.
- After the House has resolved into the Committee of the Whole for the consideration of the measure. Deschler Ch 17 § 24.5.

- After debate on the measure has started in the House. Deschler Ch 17 § 24.6.
- After adoption of the measure. Deschler Ch 17 § 24.7.

The point of order is premature and will not be entertained:

- Where a resolution providing for the consideration of the bill is before the House. Deschler Ch 17 § 24.2.
- Pending a unanimous-consent request to consider the measure otherwise not privileged for consideration. 90–2, Oct. 11, 1968, p 30751.

§ 24. Witnesses

Summoning Witnesses; Subpenas

Witnesses are summoned before a committee pursuant to authority conferred on it by the House to send for persons or papers. 3 Hinds § 1750. In Rule XI (*Manual* § 718) the House has empowered its committees and subcommittees to issue a subpena when authorized by a majority of the members voting, a majority being present. Full committee chairpersons may authorize and issue subpenas when that authority is delegated by the full committee. Such subpenas must be signed by the chairman of the committee or by a member designated by the committee.

Under clause 2(m) of Rule XI, compliance with a committee subpena may be enforced only as authorized by the House. *Manual* § 718. This clause has been interpreted to require authorization by the full House before a subcommittee chairman may intervene in a law suit in order to gain access to documents subpenaed by the subcommittee. *In re Beef Industry Antitrust Litigation*, 589 F2d 786 (5th Cir. 1979). Enforcement procedures, see § 26, infra.

Interrogation of Witnesses

The questioning of witnesses appearing before a committee proceeds under the five-minute rule. Under this rule, committee members may take up to five minutes initially to question a witness until each member has had an opportunity to question the witness. *Manual* § 711.

Witnesses Called by the Minority

When a hearing is held on a measure or matter, the minority members on the committee have the right to call witnesses of their own choosing to testify on the subject of the hearing for one day. Such a request must be supported by a majority of the minority members and submitted to the chairman before the completion of the hearing. *Manual* § 711.

Perjury

Under federal statutes (18 USC § 1621), it is a felony to give perjurious testimony before a congressional committee. It is clear from court rulings however that the facts sought must be in aid of the committee's legislative purpose. The committee may recall a witness for additional testimony on a point already testified to, or question him about a prior denial, or address questions to him which are not clearly in aid of legislation, but a perjury indictment may not be found on false testimony in response to questions which are not asked for the purpose of eliciting facts material to the committee's investigation. *U.S.* v *Cross*, D.C.D.C. (1959), 170 F Supp 303.

A quorum of a committee must be present when testimony is given to support a charge of perjury. But the absence of a quorum of a committee at the time a witness willfully fails to produce subpenaed documents is not a valid defense in a prosecution for contempt where the witness failed to raise that objection before the committee. *United States* v *Bryan*, 339 US 323 (1950); *United States* v *Fleischman*, 339 US 349 (1950).

Use of Written Statements

Each committee is obliged to require, ''so far as practicable,'' that each prospective witness file a written statement of his proposed testimony in advance and limit his oral presentation to a summary thereof. *Manual* § 708. At investigative hearings, witnesses are permitted, in the discretion of the committee, to submit brief, sworn statements in writing for inclusion in the committee record. *Manual* § 712.

Witness Fees

Witnesses are reimbursed for their expenses pursuant to House Rule XXXV. That rule sets the same *per diem* as is authorized by the Committee on House Oversight for Members and employees of the House. *Manual* § 931. Some committees, in their rules, prescribe procedures for disbursing such fees, such as the signing of appropriate vouchers.

§ 25. — Rights or Privileges of Witnesses

Generally; Under the Constitution

Committee investigations must be conducted consistently with the United States Constitution and Bill of Rights, particularly the First, Fourth, and Fifth Amendments. Witnesses appearing at investigative hearings cannot be compelled to give evidence against themselves. They cannot be subjected to unreasonable search and seizure. Nor can the First Amendment freedoms of

speech, press, religion, or political belief and association be abridged. *Watkins* v *United States*, 354 US 178 (1957).

The Privilege Against Self-incrimination

The privilege against self-incrimination may be invoked by a person subpenaed to testify or produce materials before a House committee notwithstanding the fact that a congressional investigation is not a ''criminal case'' in the conventional sense. 3 Hinds §§ 1699, 2514. The assertion of the privilege against self-incrimination need take no particular form, provided the committee can reasonably be expected to understand it as an attempt to invoke the privilege. *Quinn* v *United States*, 349 US 155 (1955). At the same time, a witness may waive the privilege by failing to assert it, expressly disclaiming it, or testifying on the same matters concerning which he later claims the privilege. Deschler Ch 15 § 9. Thus, after testifying to an incriminating fact, a witness may not refuse to answer more questions on the same subject on the ground that such answers would further incriminate. *Rogers* v *United States*, 340 US 367 (1951).

Immunity Procedures

Under a statute adopted in 1970, a witness who refuses to testify before a congressional committee on the basis of his privilege against self-incrimination may be granted immunity by court order and, under certain conditions, compelled to testify or provide information to the committee. Under the statute, the request for the court order must have been approved by two-thirds of the entire membership of the committee. 18 USC §§ 6002, 6005. Such statutes have been upheld as constitutional. *Application of U.S. Senate Select Committee on Presidential Campaign Activities*, D.C. D.C., 1973, 361 F Supp 1270. See also 6 Cannon § 354.

Under the Rules of the House

A witness appearing at an investigative hearing before a committee of the House is entitled to certain rights or privileges under the rules of the House. See Rule XI clause 2(k). *Manual* § 712. Under these rules, the witness is entitled:

- To a copy of the committee rules.
- To be accompanied by counsel.
- To seek a closed hearing if the evidence tends to defame, degrade, or incriminate him.
- To terminate broadcast coverage of testimony being taken under subpena (Rule XI clause 3(f)).
- To submit requests to subpena additional witnesses.

- To submit brief and pertinent sworn statements in writing for inclusion in the committee record.
- To a transcript of his testimony if given in an open hearing.

Although the applicable rule permits witnesses to have counsel at investigative hearings, it is the witness, not counsel, who has ultimate responsibility for protecting his rights and invoking the procedural safeguards guaranteed under the rules of the House. The attorney for the witness may not, as a matter of right, present argument or make demands on the committee. See 89–2, Oct. 18, 1966, pp 27486–95.

§ 26. — Proceedings Against Recalcitrant Witnesses

An individual who fails or refuses to comply with a House subpena may be cited for contempt of Congress. The Supreme Court has found the subpena power to be an ''indispensable ingredient'' of the legislative powers granted to Congress by the Constitution. *Eastland* v *United States Servicemen's Fund*, 421 US 491 (1975). Although the Constitution does not expressly grant Congress the power to punish witnesses for contempt, that power has been deemed an inherent attribute of the legislative authority of Congress. See *Anderson* v *Dunn*, 19 US 204 (1821). To supplement this inherent power, the Congress in 1857 adopted an alternative statutory contempt procedure; under this statute, the refusal to comply with a congressional subpena is punishable by fine and imprisonment. 2 USC § 194. For comprehensive discussion, see CONTEMPT POWER.

§ 27. Media Coverage of Hearings and Meetings

Radio, television and still photography coverage of open committee hearings or meetings is governed by the House rules. Rule XI clause 3. *Manual* §§ 720–725. In the 104th Congress, the requirement that a committee vote to permit coverage of open meetings and hearings was eliminated. H. Res. 6, § 105, Jan. 4, 1995.

E. Committee Reports

§ 28. In General

Necessity of Report; Chairman's Duty to Report

It has been a rule of the House since 1880 that bills reported from a committee must be accompanied by written reports. Rule XVIII clause 2. Reported bills that are not accompanied by a written report are not placed

on a calendar and are not considered in the House except by unanimous consent. 8 Cannon § 2783.

The report of a committee is in the nature of argument or explanation. The report on a legislative measure does not itself come before the House for amendment or other specific action. 4 Hinds § 4674; Deschler Ch 17 § 58. And the Speaker makes no determinations as to the sufficiency of a report. 2 Hinds § 1339.

It is the duty of each committee chairman to ''promptly'' report measures approved by the committee to the House. Rule XI clause 2(l)(1). *Manual* § 713a. Under this rule, if the report on such a measure is not filed by the chairman of the committee, a majority of its members may file a written request for the filing of the report. Within seven calendar days (exclusive of the days on which the House is not in session) after the filing of the request, the committee report itself is to be filed. Excepted from this rule are certain reports of the Committee on Rules and reports on resolutions of inquiry. *Manual* § 713b.

Committee Authorization or Approval

When a committee concludes consideration of a bill, a motion to order the measure reported is in order. 4 Hinds § 4667. In this respect, the House has adhered to the principle that the reporting of a measure must be authorized by the committee acting together at a formal meeting of the committee with a quorum present (4 Hinds § 4585; 8 Cannon § 2221); reports are admissible in the House only when authorized by a vote taken at a meeting with the committee actually assembled (8 Cannon §§ 2221, 2222, 2249).

Objection being made that the text of a report does not reflect the actions of a committee, the question as to the reception of the report is submitted to the House (4 Hinds § 4591); and if a bill is held improperly reported, the bill is not entitled to a place on the calendar (4 Hinds § 3117). But after the House has voted to consider a report (4 Hinds § 4598) or after consideration has begun in the House (7 Cannon § 2225), it is too late to raise the question of authorization or to question the validity of the committee's action in reporting the bill (4 Hinds § 4599; 8 Cannon § 2223).

The rules of the House do not require that committees separately approve legislative reports. A point of order that a committee did not vote to approve a report as required by the rules of the committee is properly made in committee and not in the House. Deschler Ch 17 § 58.5.

Recommittal

The failure of a committee report to comply with the House rules—such as the Ramseyer rule (*Manual* § 745)—relative thereto may result in auto-

matic recommittal of the bill if a point of order is sustained. See, for example, 8 Cannon § 2237. However, the committee may file a supplemental report to correct technical errors in its initial report, and recommittal would not be required in such a case. If the bill is recommitted because of a defective report, further proceedings are *de novo* and all committee formalities necessary to the first report are likewise necessary to authorize a second report. 8 Cannon § 2221.

Adverse or Unfavorable Reports

A committee may report a bill adversely (*Manual* § 744) even though the committee originated the bill. 4 Hinds § 4659. A committee may also report a bill to the House with no recommendation for action (4 Hinds §§ 4661, 4662). If the committee is unable to agree on a recommendation for action, it may submit a statement of this fact in the report (4 Hinds § 4665), in which case the report may include minority views alone (2 Hinds § 945) or simply set forth the propositions representing the opposing contentions (3 Hinds § 2497; 4 Hinds § 4664).

Multiple Reports; Supplemental Reports

The report of a committee must be confined to a single volume (§ 29, infra), and ordinarily only one report is filed on each bill. Indeed, it has been held that two reports may not be filed (from the Committee on Rules) to accompany the same rule or order of business. Deschler Ch 17 § 58.2. However, the rules permit the filing of a supplemental report to correct a technical error in a previous report, and unanimous consent is not required. Deschler Ch 17 § 64.1. The failure of a committee report to comply with the Ramseyer rule, for example, may be remedied by a supplemental report. 8 Cannon § 2247. But the authority to file a supplemental report to correct a technical error in a previous report does not include the authority to file a supplemental report to change a statement of legislative intent contained in the initial report. Deschler Ch 17 § 64.1 (note) or to include additional views not timely submitted for inclusion with the report. And unanimous consent is required for a committee to file a supplemental report containing substantive interpretations of a previously reported bill. 95–1, Oct. 25, 1977, p 35006.

Reporting Bills With Amendments; ''Clean'' Bills

A committee may report a bill with various amendments for the consideration of the House. Where a bill has been extensively amended in the committee, its members may instruct the chairman to incorporate the changes into an amendment in the nature of a substitute or to introduce a

''clean'' bill, which reflects the committee's action. If the latter course is chosen, the new bill must be introduced through the hopper. In either case, the committee cannot vote to report until it has the perfected text before it. See 93–1, July 23, 1973, pp 25476–82.

§ 29. Form and Contents of Report; Inflationary Impact Statements, Cost Estimates, and Oversight Findings

Committee reports are governed as to form and content by the rules of the House. 90–1, July 12, 1967, p 18558. Those rules require that committee reports be printed (*Manual* § 821) and confined to a single volume (*Manual* § 714). Verbal statements will not be received in the House as the report of a committee. 4 Hinds §§ 4654, 4655. Any amendments referred to in the report are keyed by page and line references to the measure as printed when originally referred; such references need not correspond to the pages and lines of the reported measure. Deschler Ch 17 § 59.2.

Matters which must be included in a committee report on any public bill or resolution include:

- The total number of votes cast in a roll call vote in committee for or against the reporting of the measure and on any amendment thereto, and the names of those voting for or against. *Manual* § 713d.
- An inflationary impact statement. *Manual* § 713f.
- Estimates and comparisons as to the costs anticipated in carrying out the measure over specified periods of time. *Manual* § 748b.
- Oversight findings and recommendations required pursuant to clause 2(b)(1) of Rule X. *Manual* § 713e.
- A summary of the oversight findings and recommendations made by the Committee on Government Reform and Oversight. *Manual* § 713e.
- A description of the measure's applicability to the Legislative Branch under the Congressional Accountability Act of 1955. *Manual* § 713g.
- Identification and cost-estimates of federal mandates under the Unfunded Mandates Reform Act of 1995. *Manual* § 1007.
- Minority and/or supplementary views if properly submitted. *Manual* § 714.
- The statement required by the Congressional Budget Act of 1974, if the measure provides new budget authority or new or increased tax expenditures. *Manual* § 713e.
- The estimate and comparison prepared by the Congressional Budget Office (if timely submitted). *Manual* § 713e.

Reports of the Committee on Appropriations on general apropriation bills, and of the Committee on Rules, have additional requirements. *Manual* §§ 731, 844b.

§ 30. Comparative Prints; The Ramseyer Rule

Generally

The Ramseyer rule was first incorporated into the House rules in 1929. It was named for its author, C. William Ramseyer. 8 Cannon § 2234. This rule provides that whenever a committee reports a measure repealing or amending a statute, the committee report is to include the text of the statute and a comparative print showing the proposed omissions and insertions by stricken-through type and italics, parallel columns, or other appropriate typographical devices. *Manual* § 745. The purpose of the rule is to inform Members of any changes in existing law to occur through the proposed legislation. Deschler Ch 17 § 60; 88–1, Dec. 3, 1963, p 23036.

The Ramseyer rule requires that the statute proposed to be amended be quoted in the report; it is not sufficient that it is incorporated in the bill. 8 Cannon § 2238. However, a comparative print need only be prepared for the affected part of the law, assuming that the reported measure does not affect other parts of that law. Deschler Ch 17 § 60.6. If the bill amends existing law by the addition of a proviso, the report should quote in full the section immediately preceding the proposed amendment. 8 Cannon § 2237.

Where a committee reports a bill with amendments, the comparative print required by the rule must show the changes in existing law proposed by the bill as amended, rather than by the bill as introduced. 87–1, Sept. 22, 1961, p 20823. The rule is applied where there has been a multiple referral of a measure to two or more committees pursuant to Rule X clause 5 (*Manual* § 700).

Application of Rule

To fall within the purview of the Ramseyer rule, a bill must repeal or amend a statute in terms, and a general reference to the subject treated in a statute without proposing a specific amendment is not sufficient. 8 Cannon § 2235. Provisions in a bill which merely waive certain statutory requirements or grant an exemption therefrom are not specifically amendatory of existing law, and therefore are not subject to the Ramseyer rule requirements. Deschler Ch 17 § 60.7. Thus, the Ramseyer rule has been held inapplicable to a joint resolution extending the period for state ratification of a constitutional amendment submitted to the states, where the resolution did not specifically change the deadline for ratification, but merely extended the period ''notwithstanding'' any provision in the prior law. 95–2, Aug. 15, 1978, p 26204.

The Ramseyer rule is applicable whenever a committee ''reports'' a bill repealing or amending ''any statute or part thereof.'' *Manual* § 745. Thus the rule is not applicable to:

- A bill changing the rules of evidence for the District of Columbia courts. Deschler Ch 17 § 6.8.
- Bills discharged from a committee (as distinguished from bills reported by a committee). Deschler Ch 17 § 60.10.
- Bills amending simple resolutions. 8 Cannon § 2239.
- Special orders providing for the consideration of a bill. 8 Cannon § 2244.

The Ramseyer rule is not applicable to reports accompanying simple resolutions. 93–2, Sept. 30, 1974, p 32956. However, a Ramseyer-type comparative print is required under clause 4(d) of Rule XI whenever the Committee on Rules reports a resolution repealing or amending a rule of the House or part thereof. *Manual* § 731. This clause is applicable to resolutions reported from the Committee on Rules which propose the direct repeal or amendment of a rule of the House, but does not apply to resolutions which merely provide temporary waivers of rules during the consideration of particular legislative business. 94–1, Mar. 20, 1975, p 7677; 94–1, Mar. 24, 1975, p 8418. Nor does it apply to a special order providing for the consideration of a bill with textual modifications that would effect certain changes in House rules on enactment of the bill into law, but not itself repealing or amending any rule. 103–1, May 27, 1993, p ____.

The Ramseyer rule applies to general appropriation bills where such bills include legislative provisions (8 Cannon § 2241); indeed, appropriation bills are subject to a separate provision of the House rules requiring that the report contain a concise statement of the affect of any direct or indirect changes in the application of existing law. *Manual* § 844b.

Substantial Compliance

A Ramseyer rule violation may occur even though the bill in question proposes but one minor and obvious change in existing law. 8 Cannon § 2236. Under the doctrine of substantial compliance, however, the Speaker has overruled Ramseyer points of order on the rationale that the committee had substantially complied with the requirements of the rule and deviations were minor and inconsequential. Deschler Ch 17 §§ 60.11–60.14. Thus the Speaker has upheld a report even though it contained errors in typography and punctuation, and failed to indicate a relatively insignificant date change. 89–1, July 26, 1965, p 18100.

Points of Order

The point of order that a report fails to comply with the Ramseyer rule is properly made when the bill is called up in the House and before the House has resolved into the Committee of the Whole for its consideration. 8 Cannon §§ 2243, 2245; Deschler Ch 17 §§ 60.15–60.18. The point of order does not lie in the Committee of the Whole. 89–2, July 25, 1966, p 16840. Thus, the proper time to raise the point of order is when the motion is made to go into the Committee of the Whole to consider the bill. If that motion is withdrawn, the Chair is not obliged to rule on the point of order. 96–1, Dec. 3, 1979, p 34385.

When a point of order is raised that a report is in violation of the Ramseyer rule, it is incumbent on the proponent of the point of order to cite the specific statute which will be amended by the pending bill. 8 Cannon § 2246.

A point of order will not lie against a committee report merely because the comparative print required by the Ramseyer rule includes laws which are not affected by the reported bill but which are included to give full information to the Members. 88–1, Dec. 3, 1963, p 23036.

Compliance with the Ramseyer rule may be waived by unanimous consent or by special rule. Deschler Ch 17 §§ 60.19, 60.20. However, a special order providing for the consideration of a bill, unless specifically waiving points of order, does not preclude the point of order that the report on such a bill fails to comply with the Ramseyer rule. 8 Cannon § 2245.

Recommittal

Where a report on a bill fails to comply with the provisions of the Ramseyer rule and a point of order is sustained on that ground, the bill is recommitted to the committee reporting it. 8 Cannon § 2237; Deschler Ch 17 § 60.2. Further proceedings are *de novo* and the bill must again be considered and reported by the committee as if no previous report had been made. 8 Cannon § 2249.

§ 31. Printing; Referral to Calendars

Generally

Unless a report is privileged for immediate consideration (§ 33, infra), it is delivered to the Clerk for printing and reference to the proper calendar under the direction of the Speaker. *Manual* § 743. Privileged reports are filed from the floor while the House is in session and referred to the appropriate calendar and ordered printed by the Speaker. Deschler Ch 17 § 58.

Referrals, including sequential referrals, see INTRODUCTION AND REFERRAL.

Correction of Errors

Under a rule of the House, a bill reported adversely is laid on the table unless the reporting committee or a Member requests its reference to a calendar. *Manual* § 744. Nonprivileged reports on resolutions adversely reported are not printed unless a request is made that they be referred to a calendar. Deschler Ch 17 § 59.1; 86–1, July 15, 1959, p 13493. But reports on certain kinds of resolutions, such as resolutions of inquiry, are considered privileged, and are reported as such, whether favorable or adverse, and are printed and referred. See *Manual* § 857.

A ''star print'' of a committee report or reported bill is a reprint intended to correct errors in the first printing of the report. A ''star print'' may be authorized without House permission where the error was made by the Government Printing Office. 95–2, June 23, 1978, p 18806.

§ 32. Supplemental, Minority, and Additional Views

The members of a committee who are in the minority may not make a report or present a proposition of legislation, but have the right to file views to accompany the report. 4 Hinds §§ 4601–4605. Unless filed with the report, minority views may be presented only by consent of the House (4 Hinds § 4600; 8 Cannon § 2231).

The House rules contain the requirement that committee reports include supplemental, additional, or minority views of any committee member who gives notice, at the time of the approval of the report, of his intent to file such views within three calendar days, not counting Saturdays, Sundays or legal holidays when the House is in session on those days and not counting the partial day on which the bill is ordered reported. Within the three-day time frame, the Member is entitled to file such views, in writing and signed by him, with the clerk of the committee. *Manual* § 714. Under this rule, committee members may now file their views as a matter of right, and if one member makes a timely request for filing views, all other members of the committee may submit views for inclusion in the report up to the time that member submits his views. Deschler Ch 17 § 64.

§ 33. Filing Reports

Nonprivileged reports are filed by delivering them to the Clerk for reference to the calendars under the direction of the Speaker. *Manual* § 743.

Privileged reports are filed from the floor and referred to the appropriate calendar by the Speaker. Deschler Ch 17 § 58.

Ordinarily, a committee report on a bill or other measure reported to the House must accompany the reported measure. *Manual* § 821. Permission to file a committee report at other times is sometimes obtained by unanimous consent. Deschler Ch 17 § 62. Permission to file a privileged report when the House is not in session may be obtained by unanimous consent (94–1, Oct. 9, 1975, p 32604) but not by motion (97–2, Dec. 17, 1982, p 31951).

Unanimous consent has been granted to permit a standing committee:

- To file a report after *sine die* adjournment. 87–2, Oct. 5, 1962, p 22618.
- To have until midnight to file a report. Deschler Ch 17 §§ 62.4–62.6.
- To file a report after the House has adjourned on a particular day. 93–2, Jan. 21, 1974, p 139.

The House may extend the time for a select committee to file a report pursuant to a simple resolution (94–2, Jan. 29, 1976, pp 1631–41) or by agreement to a unanimous-consent request (94–2, Aug. 2, 1976, p 25086). An extension of time to file has been given to a joint committee pursuant to a joint resolution (95–1, Feb. 7, 1977, p 3796) or to a unanimous-consent request agreed to in each House (86–1, Feb. 26, 1959, p 3049).

§ 34. Calling Up; Time to Report

Privileged and Nonprivileged Reports Distinguished

Certain committee reports may be called up as privileged under the rules and precedents of the House. If privileged, a report may be filed from the floor at any time; its consideration is preferential and does not require a special rule from the Rules Committee. Deschler Ch 17 § 63. The report may be privileged even though the measure in question is reported adversely. 6 Hinds § 413; 8 Cannon § 2310; Deschler Ch 17 § 63.3.

Privileged status is accorded to:

- Reports on Presidential vetoes. Deschler Ch 17 §§ 63.1, 63.2.
- Reports on impeachments. Deschler Ch 17 § 63.3.
- Reports on questions involving the privileges of the House, such as reports relating to the refusal of a witness to testify or produce documents. Deschler Ch 17 §§ 63.4–63.7.
- Reports by those committees specified by the House rules which are authorized to report at any time on particular matters, subject to applicable layover requirements. *Manual* § 726.

- Reports which may be reported at any time by specific authorization of a House resolution. Deschler Ch 17 § 63.10.
- Reports on measures which may be reported at any time pursuant to statute, as in the case of certain resolutions of disapproval. Deschler Ch 17 § 63.11 (note).

As noted above, certain committees are, by rule of the House, given leave to report at any time on matters particularized in the rule. Rule XI clause 4(a). *Manual* § 726. This privilege to report at any time does not extend to matters not specified by the rule (4 Hinds § 4622; 8 Cannon § 2286). The committees with leave to report at any time on specified matters under this rule are shown in the table below:

Committee	Eligible Matters and Measures
Rules	Rules, joint rules, and the order of business.
Appropriations	General appropriation bills, certain joint resolutions continuing appropriations, but not appropriations for specific purposes (8 Cannon § 2285).
Budget	Budget concurrent resolutions under the Congressional Budget Act of 1974.
House Oversight	Enrolled bills; election contests; printing; noncurrent House records; contingent fund expenditures.
Standards of Official Conduct	Certain resolutions recommending action with respect to a Member, officer, or employee.

The right to report at any time is said to carry with it the right to consideration at any time (4 Hinds § 3131), subject to applicable layover requirements (see § 35, infra), provided it is not in conflict with other rules of the House or with some matter enjoying a higher privilege in the order of business. 8 Cannon § 2291. Measures reported under a leave to report at any time yield to questions of privilege (6 Cannon § 557) and to measures already given a priority by a special order (4 Hinds §§ 3175, 3176).

Where a committee has been given the privilege of reporting at any time with respect to a certain matter, it may report Senate bills as well as House bills under the privileged status given. Deschler Ch 17 § 63.10.

Nonprivileged reports are made by delivering them to the Clerk. *Manual* § 743. Reports privileged under the rules, on the other hand, must be made from the floor (4 Hinds § 3146; 8 Cannon § 2230) and lose their privilege when reported by delivery to the Clerk (unless subsequently reported from the floor). 8 Cannon § 2233. Reports accorded privileged status for consideration by statute are excepted from the general rule that privileged reports must be filed from the floor in order to preserve their privilege. Deschler Ch 17 § 63.11.

Who May Call Up; Reading

A committee ordinarily authorizes its chairman to submit and call up its report (4 Hinds § 4669) and he may do so even though he has not concurred therein (4 Hinds § 4670). But the committee may authorize other members of the committee to present reports (4 Hinds § 4669) and under some circumstances minority members of the committee have been ordered to present the report of the committee. 4 Hinds §§ 4672, 4673; 8 Cannon § 2315. Reports are not normally read by the Clerk on the floor. Indeed, the reading of the report is in order only in the time of debate (5 Hinds §§ 5292, 5294), and a report may not be read by a Member in his debate time without leave of the House (5 Hinds § 5293).

Withdrawal

The chairman of a committee, having made a report to the House in accordance with instructions from his committee, may not withdraw it except by consent of the House (4 Hinds § 4690; 8 Cannon § 2312). And when placed on the calendar, a bill is not subject to further consideration by the committee reporting it (8 Cannon §§ 2218, 2307).

§ 35. ''Layover'' Requirements

With certain exceptions, the House rules require that a committee report on a measure or matter be available to Members for three calendar days (excluding Saturdays, Sundays, and legal holidays, unless in session) before the measure may be considered in the House. The rule permits consideration of a measure on the third day a report is available rather than on the fourth day following its availability. *Manual* § 715. The three-day rule runs anew from the time of availability of a supplemental report to correct a technical error in a previous report. Deschler Ch 17 § 64.1.

Exempt from the three-day layover requirement are:

- Reports taking up a question involving the privileges of the House or affecting the dignity and integrity of its proceedings. Deschler Ch 17 § 63.16.
- Reports from the Committee on Rules on the order of business (*Manual* § 715), such reports being subject to a separate one-day layover requirement. *Manual* § 729a.
- Reports from the Committee on House Oversight on committee expense resolutions, such reports being subject to a separate one-day layover requirement. *Manual* § 732b.
- Budget Committee reports on concurrent resolutions on the budget, which are subject to a five-day availability requirement and an additional one-day availability requirement for any Rules Committee report thereon. Congressional Budget Act of 1974 § 305(a)(1).
- Declarations of war or national emergency. *Manual* § 715.
- Resolutions of approval or disapproval and impending actions or determinations by a government agency (*Manual* § 715), such as the Federal Trade Commission. 97–2, May 26, 1982, pp 12027–30.

Points of order against consideration of a bill for failure of the report thereon to be available for three days may be waived pursuant to a resolution from the Committee on Rules (95–1, July 29, 1977, p 25653), which waiver may be called up the same day reported from Rules without a two-thirds vote (*Manual* § 715).

§ 36. Points of Order Relating to Reports

Generally

A point of order will lie in the House against consideration of a measure on the ground that the committee report on it does not include votes on the motion to report or on amendments offered in committee (§ 16, supra) or does not comply with other House rules, such as the Ramseyer rule (§ 31, supra) or the cost-estimate requirement (§ 29, supra). Deschler Ch 17 § 58. Other requirements that provide a basis for a point of order against a committee report include provisions relating to:

- The availability of the report (*Manual* § 715).
- The quorum to order reported (*Manual* § 713c).
- Oversight findings (*Manual* § 713e).
- Government Reform and Oversight summary *Manual* § 713e).
- Inflationary impact statement (*Manual* § 713f).
- Fiscal ramifications (*Manual* § 713e).
- Statement on cost of federal mandate (Congressional Budget Act, § 425).

Points of order against consideration for noncompliance with the rules in the preparation of the report should be made in the House; a point of order that a committee report is not in proper form does not lie in the Committee of the Whole. 89–2, July 25, 1966, pp 16840, 16842.

The Chair does not rule on points of order relating to the sufficiency, insufficiency, or legal effect of committee reports, they being matters for the House to decide. 4 Hinds § 1339; Deschler Ch 17 §§ 58.3, 58.4. And a point of order will not lie against a committee report on the ground that an agency has failed to report to Congress in accordance with statute. 90–1, July 12, 1967, p 18558.

Points of order as to reports on appropriation bills, see APPROPRIATIONS.

Waiving Points of Order

Defects in the reporting of a bill by a standing committee may be remedied in a proper case by:

- Adoption of a special rule from the Committee on Rules waiving the point of order. Deschler Ch 18 § 58.6.
- The granting of unanimous consent for the consideration of a bill, thereby waiving points of order against it and its report, if so stated. Deschler Ch 17 § 58.
- Consideration of the bill under suspension of the rules. Deschler Ch 17 § 58.

The House may adopt a special rule waiving points of order against consideration of a bill for failure of the report thereon:

- To include the number of votes cast for and against the motion to order the bill reported on a roll call vote in committee, in violation of the applicable House rule (*Manual* § 713d). 95–1, Mar. 24, 1977, p 8911.
- To be contained in one volume. 95–1, July 29, 1977, p 25653.
- To comply with the cost-estimate requirements. Deschler Ch 17 § 61.1; 94–2, June 11, 1976, p 17782.
- To contain oversight findings in violation of a House rule. 95–1, June 8, 1977, p 17965.
- To comply with the reporting requirements of § 402(a) of the Budget Act. 94–2, Sept. 29, 1976, p 33564.

Committees of the Whole

A. GENERALLY

B. CONSIDERATION AND DEBATE IN COMMITTEE

C. MOTION PRACTICE IN COMMITTEE

D. RISING; REPORTING TO THE HOUSE

Research References
4 Hinds §§ 4704–4922
8 Cannon §§ 2318–2430
5 Deschler Ch 19
Manual §§ 861a–877

A. Generally

§ 1. In General

Role and Functions; Historical Background

The Committee of the Whole has been described as an ancient parliamentary institution (4 Hinds § 4705), having been derived from the practice of the English House of Commons. Deschler Ch 19 § 5. The Continental Congress used the Committee of the Whole for important business on frequent occasions. The concept that the Committee of the Whole should receive what were called ''the greater matters of legislation'' has gradually resulted in the usage now crystallized in Rule XIII clause 1 (*Manual* § 742), which requires the reference to it of all bills directly or indirectly raising revenue, general appropriation bills, and public bills appropriating money or property. See 4 Hinds § 4705.

The Committee of the Whole meets to consider matters referred to it under rules designed to expedite consideration and to allow greater participation by Members in debate. The Committee of the Whole is in this respect comparable to a standing committee. 4 Hinds § 4706. The Committee of the Whole is never dissolved, and bills remain on its calendar until reported after consideration. 4 Hinds § 4705.

Every Member of the House is a member of the Committee of the Whole. But the Committee may sit with a smaller number (100 Members) than is required to transact business in the House (218 Members). Quorums generally, see QUORUMS.

Distinguishing the Committee of the Whole

The term ''Committee of the Whole'' ordinarily refers to the Committee of the Whole House on the state of the Union, which considers public bills. Deschler Ch 19 § 1. Historically, the term has also been used to refer to the ''Committee of the Whole House,'' which formerly considered business on the Private Calendar. Since 1935, however, bills on the Private Cal-

endar have been considered in the House *as in* Committee of the Whole; thus, the term ''Committee of the Whole House'' has no application in the modern practice of the House. Deschler Ch 19 § 1.

House *As In* Committee of the Whole

When the House sits *as in* Committee of the Whole, it does not actually resolve into the committee; it sits ''as in'' Committee of the Whole to allow consideration of bills under the five-minute rule without general debate and with the bill considered as read and open to amendment at any point. 4 Hinds § 4924; *Manual* § 424. This practice is permitted, in the consideration of public bills, only by unanimous consent (4 Hinds § 4923) or pursuant to a special rule from the Committee on Rules. 93–2, Dec. 18, 1974, p 40858.

When the House is sitting *as in* Committee of the Whole, it may invoke many procedures which are not available to it when it is meeting in the Committee of the Whole; it may:

- Order the yeas and nays (4 Hinds § 4923) by one-fifth of those present or upon objection for lack of a quorum.
- Receive messages from the President of the Senate. 4 Hinds § 4923.
- Permit withdrawal of amendments before action thereon. 4 Hinds § 4935.
- Refer to a committee. 4 Hinds §§ 4931, 4932.
- Entertain the previous question. 4 Hinds §§ 4926–4929; 6 Cannon § 639.
- Entertain the motion to reconsider. 8 Cannon § 2793.
- Entertain motions to adjourn. 4 Hinds § 4923.

Significance of the Mace

The position of the mace in the Chamber signifies to the Members whether the House has resolved itself into the Committee of the Whole. When the mace is in position on the higher pedestal at the Speaker's right, the House is in regular session. When the Members begin deliberations in the Committee of the Whole, the mace is placed on the lower pedestal next to the desk of the Sergeant at Arms. 89–2, July 13, 1966, p 15403.

§ 2. Jurisdiction and Authority; Reference

Generally; Public Bills

The Committee of the Whole considers business on the Union Calendar—that is, public bills. 4 Hinds § 4705; Deschler Ch 19 § 1. Bills raising revenue, general appropriation bills, and bills of a public character directly or indirectly appropriating money or property, are referred to this calendar. *Manual* § 742. Where the purpose of a bill is to raise revenue, even though that purpose is affected indirectly, the bill is within the jurisdiction of the Committee of the Whole. 8 Cannon § 2399.

Whether a bill should be referred to the Union Calendar is governed by the text of the bill as referred to committees, and amendments reported by the committee reporting it are not considered. Thus, a bill which includes a charge on the Treasury is referred to the Union Calendar notwithstanding a committee amendment striking out that charge. 8 Cannon § 2392.

Measures Other Than Public Bills

Although the jurisdiction of the Committee of the Whole is devoted primarily to the consideration of public bills, other matters are sometimes considered in the Committee pursuant to House order. For example, as noted below, the annual message of the President is customarily referred to the Committee of the Whole by motion. And propositions to change the rules of the House are sometimes considered in Committee of the Whole. 4 Hinds § 4822; 91–2, July 13, 1970, p 23901. Moreover, although there are certain matters, such as propositions involving a tax or an appropriation, which must, by House rule, be considered in the Committee (see § 3, infra), it is now well settled that there are many subjects which are not specified in the rule which may nevertheless be considered in the Committee of the Whole. 4 Hinds § 4822.

Referrals; Effect of Special Rules

Reported legislative measures are referred by the Speaker to the Union Calendar for subsequent consideration in the Committee of the Whole. Their consideration therein is governed by special rules reported by the Committee on Rules or by the standing rules applicable to the Committee of the Whole. See Rule XXIII.

The Committee has no authority to change an order of the House governing the consideration of a particular measure in the Committee. 4 Hinds §§ 4712, 4713; 8 Cannon §§ 2321, 2323. Thus, where the Committee is considering a bill under a special rule that fixes the time for debate and the kinds of amendments that may be offered, a Member may be denied recognition to seek unanimous consent to offer a measure that is beyond the scope of the special rule (4 Hinds §§ 4712, 4713) or to extend the time for debate as fixed thereby (5 Hinds §§ 5212–5216). Minor modification by unanimous consent, see *Manual* § 877 and SPECIAL RULES.

Bills are sometimes referred to the Committee of the Whole as a result of action in the House resulting in its recommittal (4 Hinds § 4784; *Manual* § 875) or in unusual situations pursuant to a motion to recommit in the House either with or without instructions (5 Hinds §§ 5552, 5553).

Presidential Messages

The President's state of the Union message is referred by motion to the Committee of the Whole. 90–1, Jan. 10, 1967, p 35; 92–1, Jan. 22, 1971, p 165. Other Presidential messages are normally referred to the committee having jurisdiction by order of the Speaker. *Manual* § 882. At one time, annual messages of the President were referred to and reported by the Committee of the Whole with recommendations for reference to the proper standing or select committee, but this practice was discontinued in the 64th Congress. 8 Cannon § 3350.

Limitations on Authority

The Committee of the Whole is limited as to the powers which it may exercise. Many procedures and motions traditionally used in the House may not be invoked in the Committee of the Whole. The Committee of the Whole may not:

- Appoint, authorize, or discharge committees (4 Hinds §§ 4697, 4710).
- Entertain the question of consideration (7 Cannon § 952) except pursuant to those provisions of the Unfunded Mandates Act which permit the question of consideration in the disposition of certain points of order (*Manual* § 781a).
- Transact proceedings regarding words demanded to be taken down in debate (2 Hinds §§ 1257–1259; 8 Cannon § 2539).
- Extend the time for debate fixed by the House (8 Cannon §§ 2321, 2550; *Manual* §§ 871, 877).
- Recess without permission of the House (5 Hinds §§ 6669–6671).
- Instruct conferees (8 Cannon § 2320).
- Consider questions of privilege (2 Hinds § 1657; *Manual* § 666).

Where the Committee of the Whole reports a recommendation which is ruled out as in excess of its powers, it is held that the accompanying bill stands recommitted to the Committee of the Whole. 4 Hinds § 4908; *Manual* § 335.

Authority to Originate Measures

In the early practice, the Committee of the Whole could consider a matter even though it had not been referred to it by the House. 4 Hinds § 4705. Today, the Committee no longer originates measures (4 Hinds § 4707), but receives only such as have been referred to it, usually by way of a special rule from the Committee on Rules. *Manual* § 326. Under this practice, the House may not resolve into the Committee for the purpose of originating a measure except by unanimous consent. *Manual* § 412. And, absent an appropriate referral, the Committee may not report a recommendation, which,

if carried into effect, would change a rule of the House. 4 Hinds §§ 4907, 4908.

Conference Reports

Conference reports are considered in the House rather than in the Committee of the Whole, and this is so notwithstanding a point of order that the report contains matter ordinarily requiring consideration in the Committee. 5 Hinds §§ 6559, 6561.

§ 3. Matters Requiring Consideration in the Committee

Generally

A standing rule of the House specifies the matters which must be considered in the Committee of the Whole before consideration in the House. The matters so specified include all motions or propositions involving a tax or charge upon the people, all proceedings ''touching'' appropriations of money, or bills making appropriations of money, or property, or requiring such appropriation to be made or authorizing payments out of appropriations already made. Also included within the rule are bills releasing any liability to the United States for money or property, or referring any claim to the Court of Claims. A point of order under this rule may be raised at any time before the consideration of a bill has commenced. Rule XXIII clause 3. *Manual* § 865.

The rule requiring consideration in Committee of the Whole may be waived by unanimous consent. 4 Hinds § 4823; 8 Cannon § 2393. And the effect of a special order may be to discharge the Committee and bring the bill directly before the House. *Manual* § 867.

The requirement of Rule XXIII clause 3 is that the class of business specified by the rule must be ''first'' considered in the Committee of the Whole. *Manual* § 865. It follows that a bill considered in the Committee of the Whole, reported to the House, and then recommitted by the House to a standing committee, is not, when again reported to the House, necessarily subject to the point of order that it must be considered in Committee of the Whole. 4 Hinds § 4828; 5 Hinds §§ 5545, 5546; *Manual* § 867.

Measures Requiring Consideration in the Committee

- A bill increasing the rate of postage. 4 Hinds § 4861.
- A bill creating a new Federal office. 4 Hinds § 4846.
- A bill authorizing an undertaking by a government agency which will incur an expense to the government, however small. 8 Cannon § 2401.

- A bill under which an expenditure is probable. Deschler Ch 19 § 1.
- A bill setting in motion a chain of circumstances destined ultimately to involve certain expenditures. 4 Hinds § 4827; 8 Cannon § 2399.

Measures Held Not to Require Consideration in the Committee

- A measure which does not directly make an appropriation of money or require one to be made, and which can be executed without such funds. 4 Hinds § 4856.
- A bill making an expenditure that is to be borne otherwise then by the Federal Government. 4 Hinds § 4831.
- A measure proposing an amendment to the Constitution to extend the term of office of certain officials. 8 Cannon § 2395.

§ 4. — Amendments

The rule that any proposition involving a tax or an appropriation of money or property must be considered in the Committee of the Whole (§ 3, supra) is applicable to amendments to House bills (4 Hinds §§ 4793, 4794) and to Senate amendments to House measures as well. Deschler Ch 19 § 1. Accordingly, where a House bill returned with Senate amendments involving a new matter of appropriation has been referred by the Speaker to a standing committee, it is, upon being reported therefrom, referred directly to the Committee of the Whole. 4 Hinds §§ 3094, 3108–3110; *Manual* § 883. And when an amendment is offered in the House to provide an appropriation for a purpose other than that of the Senate amendment, the House goes into Committee of the Whole to consider it. 4 Hinds § 4795.

The question as to whether a Senate amendment involves a tax or an appropriation so as to require consideration in Committee of the Whole is applied to each amendment received from the Senate. The fact that the original House bill was considered in Committee of the Whole is not taken into consideration in determining this question. 8 Cannon § 2381.

An amendment of the Senate to a House bill is subject to the point of order that it must first be considered in the Committee of the Whole if, originating in the House, the amendment would be subject to that point of order. Rule XX clause 1. *Manual* § 827. Hence, a Senate amendment which on its face places a charge on the Treasury must be considered in Committee of the Whole absent proof to the contrary. 8 Cannon § 2387. But a Senate amendment which merely modifies a House proposition, such as an increase or decrease in the amount of an appropriation and which does not involve a new and distinct expenditure, is not required to be considered in the Committee of the Whole. 4 Hinds §§ 4797, 4800; 8 Cannon §§ 2382, 2385; *Manual* § 828a. Moreover, the requirement that certain Senate amendments be considered in the Committee applies only before the stage of disagreement

has been reached on the Senate amendment, and it is too late to raise a point of order that Senate amendments should have been considered in the Committee after the House has disagreed thereto and the amendments reported from conference in disagreement. 94–1, Dec. 4, 1975, p 38714. The fact that one of several Senate amendments must be considered in Committee does not prevent the House from proceeding with the disposition of those not subject to the point of order. 4 Hinds § 4807.

The requirement of Rule XX that the amendment be ''first considered'' in the Committee does not apply if the House has agreed to a special order providing that the amendment is ''hereby'' considered as adopted. 103–1, Feb. 4, 1993, p ____.

§ 5. Resolving Into the Committee

Generally; Declaration by Speaker

The House may resolve into the Committee of the Whole pursuant to motion (§ 6, infra), or to a special rule from the Committee on Rules. 4 Hinds § 3214; 7 Cannon §§ 783, 794; Deschler Ch 19 § 4. And when no other business is pending, the Speaker is authorized pursuant to a rule adopted in 1983 to declare the House resolved into the Committee without intervening motion to consider a measure at any time after the House has adopted a special order providing for its consideration, unless the resolution specifies otherwise. *Manual* § 862. Since this rule was adopted, it has become a frequently used mechanism for resolving into the Committee for the consideration of nonprivileged bills and even, on occasion, of general appropriation bills.

Resolving Automatically Into the Committee

The House automatically and without motion resolves itself into the Committee of the Whole to consider a measure:

- When a special rule from the Committee on Rules provides for the immediate consideration of the measure in the Committee of the Whole. 7 Cannon §§ 783, 794; Deschler Ch 19 § 4.1.
- After the Speaker has ruled on words taken down in the Committee during the consideration of the measure. Deschler Ch 19 § 4.8.
- After a recommendation of the Committee that the enacting clause of the measure be stricken is rejected by the House. Deschler Ch 19 § 10.9.
- When a bill on the Union Calendar is timely called up (or is the unfinished business) on Calendar Wednesday. 7 Cannon §§ 939, 940, 942; *Manual* § 898.

§ 6. — By Motion

The House may resolve into Committee of the Whole pursuant to motion (Deschler Ch 19 § 4), as follows:

> MEMBER: Mr. Speaker, I move that the House resolve itself into the Committee of the Whole House on the state of the Union for the [further] consideration of _____.

This motion is listed eighth in the daily order of business (*Manual* § 878), but the motion is usually given more preferential status by the adoption of a special rule reported from the Committee on Rules (Deschler Ch 19 § 4). Where a motion that the House resolve itself into the Committee of the Whole is pending, the motion that the Committee be discharged and that the bill be laid on the table is not preferential and not in order. Deschler Ch 19 § 4.13. And the question of consideration may not be raised against the motion to resolve into the Committee, for the motion to resolve is itself a test of the will of the House on consideration. Deschler Ch 19 § 4.10.

A Member may withdraw his motion that the House resolve itself into the Committee of the Whole at any time before the motion is acted upon. Deschler Ch 19 § 4.11.

A motion to resolve into the Committee of the Whole to consider general appropriation bills is in order on any day under Rule XVI clause 9, by direction of the Appropriations Committee. *Manual* § 802. The motion is in order under this rule on District Mondays (8 Cannon §§ 876, 1123; *Manual* § 802), and on Wednesdays subject to the limitations of the Calendar Wednesday rule (*Manual* § 802).

The motion is highly privileged. 4 Hinds § 3080. Rule XI clause 4(a) (*Manual* § 726) bestows the same status on joint resolutions continuing appropriations if reported before September 15 preceding the fiscal year to which the resolution applies. The use of the motion to consider revenue bills in the Committee was held to be of equal privilege, but this ruling was made prior to the change in Rule XI clause 4, which eliminated the privilege conferred on the Ways and Means Committee to report revenue measures at any time. Deschler Ch 19 § 4, note 17. There no longer is a privileged status for the motion to resolve into Committee of the Whole to consider bills raising revenue. *Manual* § 802.

Although highly privileged, the motion does not take precedence over a motion to reconsider (4 Hinds § 3087), or a motion to change the reference of a bill (7 Cannon § 2124).

The motion to resolve into the Committee of the Whole under Rule XVI clause 9 is neither debatable nor amendable (4 Hinds § 3078); it is not

subject to a demand for the previous question (4 Hinds § 3077), and may not be laid on the table or indefinitely postponed (6 Cannon § 726).

After refusing to go into Committee of the Whole to consider a particular bill, the House may then consider business prescribed by the regular order. 4 Hinds § 3088. Thus the House may reach legislation of lesser privilege by rejecting the motion to resolve into the Committee to consider an appropriation bill. Deschler Ch 19 § 4.4. Nonprivileged matters are considered in the Committee of the Whole pursuant to a special rule from the Committee on Rules or pursuant to a unanimous-consent request.

§ 7. The Chairman

The Chairman of the Committee of the Whole is appointed by the Speaker. *Manual* § 861a. Following a custom of the British Parliament (Deschler Ch 19 § 5), the House requires the Speaker ''in all cases'' to leave the Chair after appointing the Chairman. *Manual* § 861a. Where the Member named by the Speaker to act as Chairman is unavailable, the Speaker may ask another Member to assume the Chair as Chairman pro tempore. Where the Member appointed to preside over the Committee is a female Member, the proper form of address is ''Madam Chairman.'' 93–1, Sept. 20, 1973, p 30592.

In general, the Chairman recognizes for debate and decides questions of order arising in the Committee independently of the Speaker. Deschler Ch 19 § 5.1. Where words are ''taken down'' in debate, the Chairman reports them to the Speaker who rules on their admissibility (see *Manual* § 761, and § 16, infra); otherwise, points of order relating to procedure in the Committee are decided by the Chairman rather than the Speaker. 5 Hinds § 6927. An appeal from the Chairman's ruling may be made to the full Committee (5 Hinds § 6928; Deschler Ch 19 § 9.1), or, in exceptional cases, the Committee may rise and report the question to the House (4 Hinds § 4783).

The Chairman has a duty to call to order any Member who violates the privileges of debate (8 Cannon § 2515) even in the absence of any suggestion from the floor (8 Cannon § 2520). And he may cause the galleries or lobbies to be cleared in case of disturbance or disorderly conduct. *Manual* § 861a.

The Chairman directs the Committee to rise when the hour previously fixed for adjournment arrives or when the hour fixed by the House for termination of the consideration of the bill in Committee arrives. 4 Hinds § 4785; 8 Cannon § 2376.

§ 8. — Limitations on Jurisdiction and Authority

The functions of the Chairman of the Committee of the Whole are not unlimited; certain determinations are reserved to the Speaker, the House, or the Committee itself. Thus the Chairman does *not*:

- Recognize for requests to suspend the rule governing admissions to the floor. 5 Hinds § 7285.
- Decide whether the Committee may sit in executive session. Deschler Ch 19 § 7.18.
- Rule on the sufficiency or legal affect of committee reports. Deschler Ch 19 § 7.17.
- Rule on questions of constitutionality. Deschler Ch 19 §§ 7.1–7.3, 8.10.
- Pass on the merits of a legislative proposition. Deschler Ch 19 § 7.4.
- Interpret the consistency of a provision in a bill with existing law. Deschler Ch 19 § 7.5.
- Pass on the legal effect of funding limitations that do not appear in the pending bill. Deschler Ch 19 § 7.16.
- Rule on the consistency of amendments. Deschler Ch 19 §§ 8.6–8.9.
- Construe the general meaning or effect of an amendment (Deschler Ch 19 §§ 8.1–8.4) or rule on whether it is ambiguous (Deschler Ch 19 § 8.5).
- Rule on hypothetical questions. Deschler Ch 19 §§ 7.6–7.8.
- Determine issues not presented in a point of order. Deschler Ch 19 § 6.1.
- Construe the result of a vote. 87–1, Sept. 13, 1961, p 19206.
- Interpret the rules or procedures of the Senate. Deschler Ch 19 § 7.19.
- Entertain requests to change an order of the House governing the consideration of the measure in the Committee. 8 Cannon § 2323; *Manual* § 877.
- Rule on the propriety of amendments including in a motion to recommit with instructions. 98–1, July 28, 1983, pp 21470, 21471.
- Respond to inquiries concerning the legislative schedule outside the Committee of the Whole. 97–2, July 29, 1982, p 18605.
- Rule on procedural questions that may arise when a bill is reported back to the House (Deschler Ch 19 § 7.10) or predict what action may take place in the House after the Committee rises (Deschler Ch 19 § 7.9).
- Determine the vote required to adopt a resolution in the House. Deschler Ch 19 § 7.13.
- Determine whether the House can rescind a time limitation imposed by the Committee. Deschler Ch 19 § 7.12.
- Determine whether or when a pending bill will be taken up again after the Committee rises. Deschler Ch 19 §§ 7.14, 7.15.

B. Consideration and Debate in Committee

§ 9. In General; Quorums

Generally

The conditions under which a particular measure is to be considered and debated are ordinarily determined under Rule XXIII clause 1 or pursuant to a special rule from the Committee on Rules or other House order. The Committee of the Whole may not set aside or modify such an order (4 Hinds §§ 4712, 4713; 8 Cannon §§ 2321, 2322; Deschler Ch 19 § 15), even by unanimous consent (8 Cannon §§ 2550–2552); *Manual* § 877.

Quorum Requirements

Until 1890, a quorum of the Committee of the Whole was the same as a quorum of the House. *Manual* § 329. In that year, a rule was adopted fixing a quorum of the Committee of the Whole at 100 Members. *Manual* § 863. Where the Chair has announced the absence of a quorum in the Committee of the Whole, no further business may be conducted until a quorum is established. 96–1, Sept. 6, 1979, p 23355. And when a vote is taken in Committee of the Whole notwithstanding the absence of a quorum, a timely point of order having been made, the vote is invalid. 6 Cannon §§ 676, 677. However, a quorum is inferred (or presumed) if no question is raised with respect thereto; that is, a quorum is presumed to be present unless otherwise determined. See 4 Hinds § 2895; 6 Cannon §§ 565, 624.

Under the modern practice, when a Committee of the Whole finds itself without a quorum, and a timely point of order is made, the Chairman directs that the Members record their presence by electronic device. *Manual* § 863. It is a quorum of the Committee—100 Members—and not a quorum of the House, which must appear. 89–2, Oct. 12, 1966, p 26247. In ascertaining the presence of a quorum, the Chairman includes those present but not voting as well as those Members voting. 6 Cannon §§ 641, 671; Deschler Ch 20 § 7.7.

Where, following a timely point of order, the Chair announces that a quorum is not present, a motion that the Committee rise is in order and does not require a quorum for adoption. 8 Cannon § 2369. Deschler Ch 20 § 7.13. If a quorum develops on a negative vote on the motion, the Committee proceeds with its business. 6 Cannon §§ 670, 671; 8 Cannon § 2369. Motions to rise generally, see §§ 26–28, infra.

The House rules (Rule XXIII clause 2) have sharply limited the circumstances under which a no-quorum point of order may be raised once the House has resolved into Committee. After the roll has once been called in

that Committee of the Whole to establish a quorum on any given day (or if a quorum was disclosed on a recorded vote), the Chairman may not thereafter entertain a point of order that a quorum is not present unless (1) the Committee is operating under the five-minute rule and (2) the Chairman has put the pending motion or proposition to a vote. *Manual* § 863. During general debate, there is no requirement of a quorum; but the Chairman is given the discretion to recognize for a point of no quorum. Rule XXIII clause 2(a).

The Chairman must entertain a point of order of no quorum during the five-minute rule if a quorum has not yet been established in the Committee on the bill then pending; the fact that a quorum of the Committee has previously been established on another bill on that day is irrelevant. 98–2, Sept. 19, 1984, p 26082. Where a recorded vote on a prior amendment or motion during the five-minute rule on that bill on that day has established a quorum, a subsequent point of no quorum during debate is precluded except by unanimous consent. 99–2, June 25, 1986, p 15551; 102–2, June 3, 1992, p ____.

§ 10. First Reading

When a bill is taken up in the Committee of the Whole, its reading in full may be demanded before general debate begins, unless such reading has been properly waived or dispensed with. 95–1, Apr. 28, 1977, p 12635. Such a reading may be demanded before general debate begins even though the bill may have just been read in the House. 4 Hinds § 4738.

The first reading of a bill in Committee of the Whole is normally dispensed with by unanimous consent (95–2, May 17, 1978, p 14147) or pursuant to a special rule from the Committee on Rules (95–2, Sept. 29, 1978, p 32662). A motion to dispense with the first reading of the bill is not in order. 8 Cannon §§ 2335, 2436; 95–1, Apr. 28, 1977, p 12635.

§ 11. General Debate

Control by the House

The duration and allocation of time for general debate in Committee of the Whole is controlled by the House, not the Committee. 91–2, Dec. 17, 1970, p 42222. The Committee may not, even by unanimous consent, extend the general debate time as fixed by the House. 96–2, Feb. 22, 1980, p 3564; *Manual* § 877.

The control of the House over general debate time in the Committee of the Whole may be exercised through the adoption of a unanimous-consent request (90–2, June 27, 1968, p 19105) or through the adoption of a

special rule from the Committee on Rules (89–2, Sept. 26, 1966, pp 23785, 23946). Thus, the House may by unanimous consent limit the general debate to a time certain and provide that at the conclusion of that debate the Committee shall rise (88–1, Apr. 9, 1963, pp 6044, 6073) or it may limit the time for general debate and divide that time among certain members (90–2, June 27, 1968, p 19105). The House having divided general debate time among certain Members, it is not in order for a Member to whom time has been yielded to ask unanimous consent for additional time, for time is controlled by those to whom it is allotted by the House and is not subject to extension by the Committee. 91–2, Dec. 17, 1970, p 42222.

When the House has vested control of general debate in the Committee in certain Members, their control may not be abrogated during that debate by another Member moving to rise, unless one of them yields for that purpose (90–1, May 25, 1967, p 14121), nor may Members yielded time in general debate yield to another for such motion (81–2, Feb. 22, 1950, p 2178).

The Hour Rule

In the absence of a House order limiting general debate in Committee of the Whole, debate in the Committee is under the hour rule. 91–1, July 28, 1969, p 20850. A Member having control of such time may not consume more than one hour. 87–2, Mar. 6, 1962, p 3484; 91–1, July 29, 1969, pp 21174–78.

Prior to 1841, there was no limit on the time which a Member might occupy when once in possession of the floor in the Committee of the Whole. Under this practice, the inability of the Committee to complete action on bills had become a serious problem. 5 Hinds § 5221. In that year, the rule of the House that no Member could speak for more than one hour (*Manual* § 758) was applied to the Committee of the Whole (*Manual* § 870). This one-hour limitation is applicable to each Member recognized to speak in the Committee. Deschler Ch 19 § 15. No matter how much time may have been placed within the control of those representing the two sides of a question, it must be assigned to Members in accordance with the rule limiting each Member to no more than one hour of debate time. 5 Hinds §§ 5005, 5006. However, a Member recognized for one hour of debate may yield time to a Member who has just occupied an hour in his own right. 8 Cannon § 2470.

Yielding Time

A Member engaged in general debate under the hour rule in Committee of the Whole may yield any portion of his time to another Member, who

may in turn yield to a third with the consent of the Member originally holding the floor. 8 Cannon § 2553. Of course, if the first Member retains control of the floor, yielding to a second Member only for a question, it is the first Member who would subsequently yield to a third. Deschler Ch 19 § 15. Conversely, where a matter is being debated pursuant to a special order vesting control of the time for debate in certain Members, one of those Members may yield a specific block of time to a second Member, in which case the second Member may yield to a third while remaining on his feet, and permission of the first Member is not necessary. Deschler Ch 19 § 15.

Members may speak in general debate on a bill as many times as they are yielded to by those in control of the debate (Deschler Ch 19 § 15.8), and those in control of such debate time may yield as many times as they desire to whom they desire (Deschler Ch 19 § 15.4).

§ 12. — Closing General Debate

General debate in Committee of the Whole is closed or terminated pursuant to House order (*Manual* § 870; see also 5 Hinds § 5221) or sooner if no Member desires to participate further (4 Hinds § 4745). Amendments may not be offered in the Committee until general debate has been closed or yielded back (4 Hinds § 4744; 5 Hinds § 5221), and motions for the disposition of the pending bill are not in order before that time (4 Hinds § 4778). However, those Members in control of the time for general debate need not use all of the time for the purpose prescribed by House order, but may agree among themselves to close further general debate, yield their remaining time, and begin consideration of the bill under the five-minute rule. 89–2, Sept. 26, 1966, pp 23785, 23946; 96–1, May 4, 1979, p 9918.

For general discussion of the practice of limiting or closing general debate, see CONSIDERATION AND DEBATE.

§ 13. Debate Under the Five-minute Rule; Amendments

Generally

Amendments to measures pending in Committee of the Whole are in order following the close of general debate. Deschler Ch 19 § 15. Amendments are offered under the so-called five-minute rule. This rule provides that any Member ''shall be allowed'' five minutes to explain any amendment he may offer, after which the Member who first obtains the floor is allowed five minutes to oppose it. *Manual* § 870. Thereafter, a Member may obtain five minutes for debate by offering the *pro forma* amendment ''to strike the last word'' no actual amendment being contemplated. *Manual* § 873a. *Pro forma* amendments, generally, see § 14, infra.

The Committee of the Whole may not, even by unanimous consent, prohibit the offering of an amendment otherwise in order under the five-minute rule. 98–2, July 31, 1984, p 21701. To guard against abuse of the rule by Members offering an amendment for the sole purpose of gaining debate time (5 Hinds § 5221), the rule itself provides that amendments may be withdrawn only by unanimous consent. *Manual* § 870.

The five-minute rule is applicable to amendments that are offered to amendments. *Manual* § 870. But where an amendment to a bill has been offered, the right to explain or oppose that amendment has precedence of a motion to amend it. 4 Hinds § 4751.

Limiting or closing five-minute debate, see CONSIDERATION AND DEBATE.

Yielding Time During Five-minute Debate

Members who have been recognized for debate under the five-minute rule may not yield time to another Member and be seated. 100–1, Dec. 10, 1987, p 34686. Although a Member recognized in debate under the rule may yield to another Member while remaining on his feet, he may not yield designated amounts of time. 5 Hinds §§ 5036, 5037; Deschler Ch 19 § 15. And he may not yield to another Member to offer an amendment. 93–1, Dec. 12, 14, 1973, pp 41171, 41716; 94–2, Sept. 8, 1976, p 29243.

Where debate on an amendment is limited or allocated by special order to a proponent and an opponent, the five-minute rule is abrogated and the Members controlling the debate may yield and reserve time; but debate time on an amendment under the five-minute rule cannot be reserved. 101–2, Aug. 1, 1990, p ____.

Reading for Amendment

In Committee of the Whole, bills are read for amendment pursuant to a practice dating from 1789. As a general rule, legislative bills have been considered by sections, because each section normally contains a substantive legislative provision. General appropriation bills, on the other hand, are ordinarily read by paragraphs, because such bills are normally drafted so that each paragraph concludes with an appropriation. This practice of reading by paragraphs has also been extended to revenue measures. 8 Cannon §§ 2340, 2347. But whether a bill shall be read by paragraphs, sections, subsections, or titles is often determined by special rule reported by the Committee on Rules, which may provide that the bill is to be ''considered as read,'' and open to amendment at any point. See, for example, 93–2, Aug. 7, 1974, p 27258.

When a paragraph or section has been passed in the reading it is not in order to return thereto (4 Hinds §§ 4742, 4743) except by unanimous consent (4 Hinds § 4746; 97–2, Nov. 30, 1982, p 28066). But the Chairman may direct a return to a section where, through his inadvertence, no action was had on a pending amendment. 4 Hinds § 4750.

§ 14. — Pro Forma Amendments

Generally

Pro forma amendments have been permitted in the Committee of the Whole since at least as early as 1868, when they were used during the consideration of articles of impeachment against President Andrew Johnson. 5 Hinds § 5778. *Pro forma* amendments are those offered during debate under the five-minute rule to make some superficial change in a measure—by tradition ''to strike the last word''—where the underlying purpose is to obtain time for debate or to offer an explanation, no actual change in the measure being contemplated. Deschler Ch 19 § 15.

When in Order

Like substantive amendments, *pro forma* amendments are in order following the reading of the section or paragraph of the pending measure. See AMENDMENTS. But *pro forma* amendments are not in order when a bill is being considered under a ''closed'' rule prohibiting all amendments unless the rule specifies to the contrary. 87–2, Oct. 5, 1962, p 22636; 95–1, Oct. 13, 1977, p 33637. Such amendments are also subject to the standing rule precluding amendments in the third degree. Thus, if the point is raised, a *pro forma* amendment is not in order during consideration of an amendment to a substitute, being in the third degree. 5 Hinds § 5779.

When Permitted

Pro forma amendments are liberally permitted during debate under the five-minute rule. Thus, while a Member may not speak twice on the same amendment, a Member may speak in opposition to a pending amendment and subsequently offer a *pro forma* amendment and debate that (Deschler Ch 19 § 15.9); and a Member who has debated a substantive amendment may thereafter rise in opposition to a *pro forma* amendment thereto (Deschler Ch 19 § 15.10). However, a Member who has occupied five minutes on a *pro forma* amendment may not lengthen this time by making another *pro forma* amendment. 5 Hinds § 5222; 8 Cannon § 2560; Deschler Ch 19 § 15. And a Member who has offered a substantive amendment and then debated it for five minutes may not extend his time by offering a *pro forma*

amendment, as it is not in order for the offerer of an amendment to amend his own amendment except by unanimous consent. *Manual* § 873a. Conversely, a Member recognized on a *pro forma* amendment may not automatically extend his time by offering a substantive amendment, not having been recognized for that purpose. Deschler Ch 19 § 15.11.

§ 15. Relevancy in Debate

General Debate

During general debate in the Committee of the Whole, a Member need not confine himself to the subject. 5 Hinds §§ 5234–5238; 93–2, June 28, 1974, p 21743. During this period, the House rules allow extraordinary freedom and latitude in debate. ''Anything may be discussed which may by the liveliest imagination be supposed to relate to the state of the Union in any particular or any degree, however remote.'' 8 Cannon § 2590. But such latitude in general debate is normally limited by a special rule from the Committee on Rules or other House order. See 93–2, June 28, 1974, p 21743. If the bill is being considered under the terms of a special rule which requires that debate be confined to the bill, a Member may proceed out of order only by unanimous consent. 90–1, Nov. 27, 1967, p 33772.

Five-minute Debate

The scope of debate under the five-minute rule is more narrowly confined than is allowed in general debate. In five-minute debate, the Member recognized is confined to the pending subject. 5 Hinds §§ 5240–5256; 8 Cannon § 2591. He must confine himself to the subject of the amendment and its relation to the bill. A discussion of amendments which may be offered at a later time is not in order. See CONSIDERATION AND DEBATE. This is due in part to the language of the applicable rule, which states that a Member is to be allowed five minutes ''to explain'' an offered amendment. *Manual* § 870. This rule has been strictly construed. A Member yielded to may speak out of order, on a matter not relevant to the pending measure or amendment, only by unanimous consent. 98–1, Apr. 28, 1983, p 10432. And it has been held that remarks on the general merits of the bill are not in order as ''explaining'' an amendment, and remarks touching on the demerits of the bill are not in order as opposing an amendment. 5 Hinds § 5242.

The rule confining debate under the five-minute rule to the subject is applicable even to *pro forma* amendments. 8 Cannon § 2591. Debate on a *pro forma* amendment must be confined to the portion of the bill to which the *pro forma* amendment has been offered. 93–2, June 21, 1974, p 20595.

However, a Member may move to strike the last word and then ask unanimous consent to speak out of order. 98–1, June 8, 1983, p 14860.

§ 16. Calling Members to Order

Jefferson suggested that, as a matter of parliamentary law, to avert the ''danger of a decision by the sword'' in the Committee of the Whole, the Speaker could take the Chair to restore order. *Manual* § 331. In several early instances, the Speaker did in fact exercise this authority. 2 Hinds §§ 1648–1652. Under the modern practice, the Chairman directs the Committee of the Whole to rise and report to the House when objections have been made under the House rules (*Manual* § 861b) for words spoken in debate. See 8 Cannon §§ 2533, 2538; Deschler Ch 19 § 17.

Under this procedure, when a Member is called to order by the Chairman he must take his seat. Deschler Ch 19 § 17.1. If unparliamentary language is used, the Chair or any Member may cause the words to be taken down at the Clerk's desk and read in the Committee, which then rises automatically and without debate. 8 Cannon §§ 2533, 2538, 2539; 98–1, May 26, 1983, p 14048. The words are then reported to the House, and are again read. 2 Hinds §§ 1257–1259. The words reported are then taken up in the House, with consideration being limited to the words reported. 8 Cannon § 2528. The Member uttering the words may withdraw them, but this is permitted at this time only by unanimous consent. 8 Cannon §§ 2528, 2538, 2540; Deschler Ch 19 § 17.7. The Speaker then rules on whether the words are unparliamentary. Deschler Ch 19 § 17.5. 78–1, Dec. 20, 1943, p 10922. It has been held that the Speaker's ruling on the propriety of the words taken down is not subject to appeal. 98–1, May 26, 1983, p 14049. However, under the modern practice, such appeals have been frequently permitted. 5 Hinds §§ 5157, 5178, 5194; 78–1, Dec. 20, 1943, p 10922.

Motions in the House to strike the words from the Record, if held out of order, and to proceed in order, are available before the Committee resumes its sitting. Instances of disorder during debate in the Committee may be disposed of in the House pursuant to a motion to expunge the offending language from the Record (8 Cannon §§ 2538, 2539), or, in especially flagrant instances, pursuant to a resolution of censure (2 Hinds §§ 1257, 1259).

After disposition of the matter in the House, the Committee of the Whole automatically resumes sitting. 8 Cannon § 2541; Deschler Ch 19 § 17.5; *Manual* § 761.

For general discussion of disorder in debate, see CONSIDERATION AND DEBATE.

§ 17. Voting

The methods and procedures by which Members vote in Committee of the Whole are prescribed by the House rules. See particularly Rule I clause 5. They include:

- *Voice vote*—Based on volume of sound of Members responding aye or no. See *Manual* § 629.
- *Division (or standing) vote*—May be invoked by the Chair or any Member, and is in order following a voice vote. Under this procedure, Members divide to be counted, with those first standing who are in favor, then those in the negative. *Manual* § 629.
- *Recorded vote*—The Members insert a personalized electronic voting card to be recorded as ''yea,'' ''nay,'' or ''present.'' The request for such a vote must be supported by at least 25 Members. Rule XXIII clause 2b.
- *Recorded vote by clerks* or a ''roll call''—The Members cast their votes by depositing a signed green (yea) or red (no) card in a ballot box. This procedure has been largely supplanted by the use of the electronic voting equipment, and is used only as a backup voting system when that equipment becomes inoperative. See 92–1, Feb. 25, 1971, p 3833. Or in the alternative as a backup, the Chair may direct the Clerk to call the roll alphabetically.

The demand which may be made in the House under the Constitution for the yeas and nays is not in order in Committee of the Whole. 4 Hinds §§ 4722, 4723; 95–1, June 2, 1977, p 17292.

Voting procedures generally are discussed elsewhere. See VOTING.

§ 18. Points of Order

Generally

In Committee of the Whole, questions of order relating to procedure (except for words taken down) are decided by the Chairman, not the Speaker. 5 Hinds §§ 6927, 6928; Deschler Ch 19 § 19. *Manual* § 861b. The Speaker cannot rule on a point of order arising in the Committee unless the point of order is reported to the House for a decision. 5 Hinds § 6987. Appeals from a decision of the Chairman on a point of order are ordinarily resolved in the Committee, but in rare cases an appeal from a decision on a point of order may be reported to the House for its determination. 4 Hinds § 4783.

Debate on a point of order raised in the Committee is within the discretion of the Chairman and must be confined to the point of order. Deschler Ch 19 § 19.2.

When in Order

Generally, points of order in the Committee of the Whole against a provision in a bill or amendment are properly made when that provision or amendment is reached in the reading. Points of order against bills in their entirety are normally in order when they are called up. Deschler Ch 19 § 20. A point of order against an amendment comes too late after there has been debate on the amendment. 90–1, July 29, 1967, p 19417; 93–1, May 10, 1973, p 15320. And once the amendment has been agreed to in Committee and reported to the House, a point of order against it is ordinarily untimely, the proper time being at the point the amendment was offered in Committee. 92–2, June 1, 1972, pp 19479, 19483. See, however, Rule XXI clause 5, permitting the raising ''at any time'' of a point of order against a bill carrying appropriations or a tax or tariff if the bill was reported by a committee not having jurisdiction to report such matters. *Manual* § 846a. Generally, see APPROPRIATIONS.

Some points of order against bills are properly raised in the House and may not subsequently be raised in Committee of the Whole. Such points of order come too late in the Committee, and should be raised in the House against consideration of the bill pending the motion to resolve into the Committee. Deschler Ch 19 § 20. This rule has been applied to points of order against consideration of the measure for:

- Violations of committee reporting requirements, such as the Ramseyer rule (that proposed changes in law be indicated typographically). Deschler Ch 19 §§ 20.1–20.3. *Manual* § 745.
- Printing requirements prior to floor consideration of measures. Deschler Ch 19 § 20.4.

Points of order generally are discussed elsewhere in this work (see POINTS OF ORDER; PARLIAMENTARY INQUIRIES), as are points of order relating to particular measures or matters. See, for example, APPROPRIATIONS. Conference reports, see CONFERENCES BETWEEN THE HOUSES.

§ 19. Unfinished Business

Business unfinished when the Committee of the Whole rises remains unfinished, to be considered first in order when the House next goes into the Committee to consider that business. 4 Hinds §§ 4735, 4736. See also UNFINISHED BUSINESS. Thus, when the Committee rises before the time fixed for debate expires, debate continues when the Committee resumes its deliberations. Deschler Ch 19 § 26.1. And when a recommendation of the Committee that the enacting clause of a bill be stricken is rejected by the

House, the House, without motion, resolves itself into the Committee for the further consideration of the bill. Deschler Ch 19 § 26.2.

Absent a special rule to the contrary, when the Committee rises on the adoption of a simple motion to rise, a bill pending at that time remains the unfinished business for subsequent consideration in the Committee. 95–2, May 12, 1978, p 13504. Similarly, if such a motion intervenes pending a request for a recorded vote, that request remains the pending business upon resumption of consideration of the bill in Committee. 95–1, Sept. 30, 1977, p 31718; 97–1, July 15, 1981, p 15921.

C. Motion Practice in Committee

§ 20. In General

Motions Permitted

The principle motions used in Committee of the Whole are:

- Motions to amend under the five-minute rule. *Manual* § 870. See also § 13, supra.
- Motions to dispense with the reading of an amendment printed in the bill as reported or as printed in the Record and properly and timely submitted. *Manual* § 873b.
- Motions to close five-minute debate. *Manual* § 874. Generally, see CONSIDERATION AND DEBATE.
- Motions relating to the enacting clause. *Manual* § 875. For comprehensive discussion, see § 22, infra.
- Motions to rise. Deschler Ch 19 § 22. See also § 26, infra.

Motions Not Entertained

The Committee of the Whole may not entertain motions involving functions properly performed by the House. Of all the motions specified by Rule XVI clause 4—to adjourn, to lay on the table, for the previous question, to postpone, to refer, or to amend—only the motion to amend is authorized in the Committee of the Whole. See *Manual* §§ 782 *et seq*. The Committee may not entertain a motion to:

- Limit general debate (as distinguished from five-minute debate). Deschler Ch 19 § 2. Generally, see CONSIDERATION AND DEBATE.
- Close general debate. 5 Hinds § 5217; *Manual* § 871.
- Dispense with the reading of a bill unless authorized pursuant to a special rule from the Committee on Rules. Deschler Ch 19 § 2.11.
- Return to a section of the bill passed in the reading. Deschler Ch 19 § 2.10.
- Effect a conference or instruct conferees. 8 Cannon §§ 2319, 2320; Deschler Ch 19 § 2.

- Order a call of the House. 8 Cannon § 2369.
- Expunge remarks from the Record. Deschler Ch 19 § 3.2.
- Order the previous question. 4 Hinds § 4716; Deschler Ch 19 § 2.6.
- Reconsider. 4 Hinds §§ 4716–4718; 8 Cannon §§ 2324, 2325; Deschler Ch 19 § 2.5.
- Recommit. 4 Hinds § 4721; 8 Cannon § 2326.
- Postpone (*Manual* § 786) or rise and resume sitting on a day certain (Deschler Ch 19 § 22.2).
- Lay on the table. 4 Hinds §§ 4719, 4720; 8 Cannon § 2330; Deschler Ch 19 § 2.7.
- Recess (absent permission of the House). 5 Hinds §§ 6669–6671; 8 Cannon § 3357; Deschler Ch 19 § 2.
- Adjourn. Deschler Ch 19 § 2.4.

Motions Recommending House Action

As noted above, the motions to postpone, recommit, or lay on the table, are not in order in the Committee of the Whole. However, under certain circumstances, the Committee may entertain a motion to rise and report with the *recommendation* that the House entertain such an action. Whether such a motion will or will not lie in the Committee is ordinarily determined by the terms of the special rule under which the measure is being considered. If, for example, the special rule provides that after consideration the Committee shall rise and report the measure to the House, with the previous question to be considered as ordered on the bill and amendments thereto to final passage, the Committee may not report to the House a recommendation that the bill be recommitted. Deschler Ch 19 § 23.12. But if not precluded by this language in the special rule ordering the previous question, the Committee may entertain a motion to rise and report with:

- A recommendation that the consideration of the bill be postponed. 4 Hinds §§ 4765, 4774; 8 Cannon § 2372; Deschler Ch 19 § 22.
- A recommendation that the bill be referred or recommitted. 4 Hinds § 4774; Deschler Ch 19 § 23.12.
- A recommendation that the bill lie on the table. 4 Hinds § 4777.

Requirement That Motions Be Written

Although motions made in the Committee of the Whole are often put forward orally, any Member may demand that a motion be made in writing. Deschler Ch 19 § 2.1 (motion to rise); 95–1, May 18, 1977, p 15418 (motion to limit debate under the five-minute rule).

Withdrawal

A motion may be withdrawn in the Committee of the Whole only by unanimous consent. 89–1, Mar. 26, 1965, p 6101. Thus, when an amend-

ment is offered, it can be withdrawn only by unanimous consent (5 Hinds § 5221) whether or not debate has proceeded (8 Cannon § 2859). This principle has also been applied to the motion to close debate under the five-minute rule (8 Cannon § 2564) and to the motion to recommend the striking of the enacting clause (98–1, July 29, 1983, p 21675).

§ 21. Precedence of Motions

Motions to Rise

As a motion of high privilege (Deschler Ch 19 § 23.2), the simple motion to rise is preferential (Deschler Ch 19 § 23.1). It takes precedence over motions to amend (4 Hinds § 4770) and over amendments pending under the five-minute rule (Deschler Ch 19 § 23.3), though it may not interrupt other Members in debate. § 26, infra. The motion takes precedence over a demand for a recorded vote on a pending amendment (95–1, Sept. 30, 1977, p 31718; 97–1, July 15, 1981, p 15921), and over a point of order of no quorum pending such a demand (see 95–1, Sept. 21, 1977, p 30126). The simple motion to rise also takes precedence over a pending motion to rise and report with the recommendation that the enacting clause be stricken. Deschler Ch 19 § 11.13; 95–2, May 17, 1978, p 14183.

Motions Relating to the Enacting Clause

The motion that the Committee rise and report to the House with the recommendation that the enacting clause be stricken is of high privilege. Deschler Ch 19 § 10.4. The motion is preferential because, if adopted, it constitutes a final disposition of the bill in the Committee. Deschler Ch 19 § 11.11, note. The motion may be offered where another Member has been recognized to offer an amendment (94–1, Apr. 23, 1975, p 11513) or when an amendment is pending (*Manual* § 875). The motion also takes precedence over a motion to limit debate (93–1, Dec. 14, 1973, pp 41711–14), and over a motion to rise and report with a favorable recommendation (8 Cannon § 2620). See also § 22, infra.

Motions to Amend

With one exception, a motion to amend a bill takes precedence over a motion to rise and report the bill. 4 Hinds §§ 4752–4758; 8 Cannon § 2364; Deschler Ch 19 § 23.14. The exception is in Rule XXI clause 2(d) (*Manual* § 834d), which specifies that when a general appropriation bill has been read for amendment, a motion to rise and report, if offered by the Majority Leader or his designee, takes precedence of a ''limitation'' amendment.

The initial right of the opponent to explain an amendment offered under the five-minute rule, or of a Member to rise in opposition thereto, takes precedence over a motion to amend that amendment. 4 Hinds § 4751.

§ 22. Motions Relating to Enacting Clauses

Generally; Effect of Rejection or Adoption

Every bill that becomes law contains the phrase: ''Be it enacted by the Senate and House . . . in Congress assembled. . . .'' It is in order to move that the Committee rise and report a bill back to the House with the recommendation that this clause, known as the enacting clause, be stricken out. 5 Hinds §§ 5326–5346; 8 Cannon §§ 2618–2638; Deschler Ch 19 § 10. Such a motion is not, strictly speaking, an amendment, since it can be dispositive of the entire bill. See Deschler Ch 19 § 10 (note 13). If the House agrees to the recommendation, its action is equivalent to a rejection of the bill. *Manual* § 875; see also 5 Hinds § 5326; Deschler Ch 19 § 10.6. If the House rejects the recommendation, it automatically resolves itself back into the Committee for the further consideration of the bill. Deschler Ch 19 § 10.9.

The motion must be in writing and in the proper form. 99–2, Aug. 15, 1986, p 22071; 99–2, Sept. 12, 1986, p 23178.

> MEMBER: I move that the Committee do now rise and report the bill back to the House with the recommendation that the enacting clause (or the resolving clause) be stricken out. Deschler Ch 19 § 10.2.

Motions which deviate from this form are subject to a point of order. Deschler Ch 19 § 10.3. Thus, a simple motion to strike the enacting clause, although at one time permitted in the Committee of the Whole (5 Hinds § 5332), is, under the modern practice, not in proper form and not in order (Deschler Ch 19 § 10.1). A motion to strike ''all after the enacting clause'' is likewise out of order. Deschler Ch 19 § 10.3. And the recommendation that the enacting clause be stricken may not be combined with a provision that the bill be recommitted to a committee. Deschler Ch 19 § 10.10.

Application to Particular Measures

The motion that the Committee rise and report to the House the recommendation that the enacting clause be stricken is applicable to the enacting clause of a Senate-passed bill. 92–2, Oct. 4, 1972, p 33785; Deschler Ch 19 § 10.14. The motion has also been used to recommend the striking of the resolving clause of a simple resolution (93–2, Oct. 7, 1974, p 34170), the resolving clause of a concurrent resolution on the budget (96–1, May

9, 1979, p 10490), and the resolving clause of a joint resolution (Deschler Ch 19 § 11.4).

Who May Offer or Oppose

A Member offering the motion to rise and report with the recommendation that the enacting clause be stricken must qualify as being opposed to the bill when challenged. *Manual* § 876a; 95–1, June 17, 1977, p 19719. A challenge being made, it is not in order for a Member in favor of a bill to offer this motion. Deschler Ch 19 § 12.2. If challenged, the Member offering the motion is required to declare his opposition to the bill. Deschler Ch 19 § 12.1. Generally, in recognizing a Member for the motion, the Chair will accept the statement of that Member that he is opposed to the bill. Deschler Ch 19 § 12.5. Similar rules are applied with respect to the qualification of a Member to oppose the motion. To obtain recognition to oppose the motion, a Member must qualify by stating that he is opposed thereto. Deschler Ch 19 § 12.11.

The practice of offering the motion merely to obtain time for debate, though subject to criticism (Deschler Ch 19 § 12.10) has been permitted (Deschler Ch 19 §§ 12.8, 12.9).

Repetition of Motion

A second motion on the same day to recommend the striking of the enacting clause is not entertained in the absence of any material modification of the bill. 8 Cannon § 2636; Deschler Ch 19 §§ 14.1, 14.2; compare 81–2, Jan. 3, 1950, p 6571. Although a second motion is in order if the bill has been substantially amended since disposition of the first motion (Deschler Ch 19 § 14.4; 97–2, July 21, 1982, p 17348), a second motion is not in order if the only action of the Committee in the interim has been the rejection of a proposed amendment to the bill (Deschler Ch 19 § 14.5). Of course, if the first such motion is withdrawn by unanimous consent, a second motion relating to the enacting clause is in order. Deschler Ch 19 § 14.7. And the motion may be renewed on a subsequent day regardless of any modification of the bill. Deschler Ch 19 § 14.8.

§ 23. — When in Order

The motion that the Committee rise and report with the recommendation that the enacting clause be stricken is not in order during general debate on the measure. Deschler Ch 19 § 10. The motion is in order only during the stage of amendment. 88–2, Aug. 7, 1964, p 18606. Thus, the motion is properly offered when the bill is being read for amendment. Deschler Ch 19 § 11.2. The motion is in order after the Clerk has begun reading the bill

for amendment under the five-minute rule (95–2, May 17, 1978, p 14173), assuming that another Member has not obtained the floor for purposes of debate (96–1, June 13, 1979, p 14710). The motion is no longer in order when the stage of amendment is passed. And the stage of amendment is passed in Committee where a bill is being considered under a rule permitting only committee amendments, and where no committee amendments are offered at the conclusion of general debate. 91–2, Apr. 16, 1970, p 12092. The adoption of an amendment in the nature of a substitute may also foreclose the opportunity to offer the motion. Deschler Ch 19 § 11.6.

§ 24. — Debate

Generally; Time Limitations

The debate on a motion that the Committee of the Whole rise and report with the recommendation that the enacting clause be stricken is governed by the five-minute rule. 5 Hinds §§ 5333–5335; 8 Cannon §§ 2628–2631; Deschler Ch 19 § 13. Debate on the motion is thus limited to 10 minutes, five minutes in favor and five minutes in opposition. Deschler Ch 19 § 13.1. The Chair has declined to recognize for requests to extend the five-minute time (Deschler Ch 19 § 13.2), and a Member may not extend his time by using time yielded to him by unanimous consent under an allocation of time on the remainder of the bill (94–1, June 24, 1975, p 20618). Debate is limited to two five-minute speeches even though the proponent and the Member in opposition both speak in favor of the motion. Deschler Ch 19 § 13.3.

Time may not be reserved. 102–1, May 22, 1991, p ____. Where a Member recognized for five minutes in opposition to the motion yields back his time another Member may not claim the unused portion thereof. 100–2, Mar. 3, 1988, p 3241.

Members of the committee managing the bill have priority in recognition for debate in opposition to the motion. 100–2, May 5, 1988, p 9955; 102–1, June 26, 1991, p ____.

Effect of Limitation of Time for Debate

A limitation of all debate time on a bill and amendments thereto to a time certain does not preclude debate on a motion to recommend the striking of the enacting clause during the time remaining under the limitation. 97–1, Oct. 5, 1981, p 23154. But the motion is not debatable after all time for debate on the bill and all amendments thereto has expired. Deschler Ch 19 § 13.7. On the other hand, where debate has been closed only as to amendments to a bill, and not on the bill itself, a Member offering the mo-

tion to strike the enacting clause is entitled to five minutes to debate that motion. 94–1, May 20, 1975, p 15465. A similar practice is followed where the limitation is only on an amendment in the nature of a substitute being read as an original bill for the purpose of amendment under a special order. 94–1, June 20, 1975, p 19966.

Scope of Debate

Since the motion to rise and report with the recommendation that the enacting clause be stricken applies to the entire bill, debate may be directed to any part of the bill—or to a pending amendment—and need not be confined to the merits of the preferential motion. 94–1, June 20, 1975, p 19951; 97–2, July 29, 1982, p 18605. Thus, the motion may be used by a Member to secure five minutes to debate a pending amendment notwithstanding a limitation of time for debate on the pending amendment and all amendments thereto. 94–1, June 20, 1975, p 19951. But the motion, while debatable as to the merits of the bill, may not be debated on matters beyond its provisions. 5 Hinds § 5336.

D. Rising; Reporting to the House

§ 25. Generally

Formal and Informal Rising Distinguished

When the Committee of the Whole terminates or suspends its proceedings, it ''rises,'' either formally or informally. Deschler Ch 19 § 21.1. When the Committee rises formally, it normally does so by motion. § 26, infra. When the Committee rises informally, it does so by unanimous consent (4 Hinds § 4788) or simply at the direction of the Chairman without a formal motion from the floor (Deschler Ch 19 § 21.1).

The Committee of the Whole may rise informally to permit the House to transact unrelated business, such as the swearing in of a Member (4 Hinds § 4791) or the receipt of a message (Deschler Ch 19 § 21.1; *Manual* § 330) or to lay down a signed enrolled bill. Having no power to receive a message, the Committee rises informally to permit the House to do so. 4 Hinds § 4786; *Manual* § 330. At this rising, the House may not have the message read or transact other business except by unanimous consent. 4 Hinds §§ 4787–4791.

Effect of Special Rules or Orders

The Committee of the Whole rises automatically and without motion when it rises pursuant to a special rule providing that at the conclusion of

consideration of the bill for amendment the Committee ''shall'' rise and report back to the House (94–1, July 30, 1975, p 25881) or to a House order limiting general debate to a time certain and providing that the Committee rise at the conclusion of that time. Deschler Ch 19 § 21.3. But a motion to rise is required to enable the Committee to rise prior to the time fixed by the applicable special rule. 7 Cannon § 793.

§ 26. Motions to Rise

Generally; Forms

The motion to rise in the Committee of the Whole is analogous to the motion to adjourn in the House. In the Committee, the motion takes two forms: (1) the simple motion to rise and (2) the motion to rise and report. 4 Hinds §§ 4766, 4767; Deschler Ch 19 §§ 22.1, 23.13. The motions are expressed as follows:

> Mr. Chairman, I move that the Committee do now rise.
>
> Mr. Chairman, I move that the Committee do now rise and report the bill back to the House with the recommendation that _____.

The motion to rise and report may recommend to the House either a favorable or adverse disposition of the bill. Or it may recommend that the consideration of the reported measure be postponed, or that it be recommitted or tabled, provided that such motion is not precluded by the applicable special rule. § 20, supra. As to the motion to rise and report with the recommendation that the enacting clause be stricken, see § 22, supra.

The motion to rise (or to rise and report) must be in writing if the demand is made. Deschler Ch 19 § 22.3. The simple motion to rise does not require a quorum for adoption. 4 Hinds §§ 2975, 2976; Deschler Ch 19 § 22.7; *Manual* § 774c. But a quorum is required on an affirmative vote on a motion to rise and report. See 4 Hinds § 2973. Neither motion is debatable. 4 Hinds §§ 4766–4768; Deschler Ch 19 § 22.4. Either may be withdrawn by unanimous consent. Deschler Ch 19 § 22.9. They may not include restrictions on the amendment process or limitations on future debate on amendments. 101–2, June 6, 1990, p ____.

§ 27. — When in Order

The motion that the Committee of the Whole rise is privileged during debate under the five-minute rule, and may be offered during debate on a pending amendment, except where another Member has the floor. 99–2, Aug. 13, 1986, p 21215. The motion is in order notwithstanding an informal

agreement among the floor managers of a bill to conclude consideration at a different time (Deschler Ch 19 § 23.4). The motion is in order:

- Pending a decision on a point of order. Deschler Ch 19 §§ 23.7, 23.8.
- After agreement to a motion to limit debate on an amendment. Deschler Ch 19 § 23.10.
- Pending a count of a quorum. Deschler Ch 19 § 23.5.
- After the absence of a quorum has been ascertained and pending a vote on an amendment (96–1, June 6, 1979, p 13648), but comes too late when the Chair has announced the absence of a quorum and the roll call has begun (91–2, Sept. 16, 1970, p 32229).
- Pending a demand for a record vote but prior to the time the Chair begins the count to determine whether a sufficient number support the demand. 94–1, Aug. 1, 1975, p 26947.

A motion that the Committee of the Whole rise may be made between the time an amendment is offered and read and before recognition of its proponent for debate thereon. 97–1, May 12, 1981, pp 9320, 9323. Where a special rule provides that the Committee rise and report at the conclusion of the consideration of a bill for amendment, a motion that the Committee rise and report the bill with certain amendments, before the bill has been completely read for amendment, is not in order, but a simple motion that the Committee rise is in order at that time. 96–1, Dec. 5, 1979, pp 34755 *et seq.*

§ 28. — Who May Offer

In the Committee of the Whole, any Member may move to rise and the Chairman is constrained to recognize for that purpose (8 Cannon § 2369), unless another Member controls the floor (Deschler Ch 19 § 24.2). Although the motion may be offered by any Member entitled to the floor in his own right (Deschler Ch 19 § 23.1), the motion is commonly made by the Member handling the bill before the Committee (Deschler Ch 19 §§ 22.5, 22.8). The motion may also be made by a Member who holds the floor by virtue of having offered an amendment. 90–1, Nov. 15, 1967, p 32694.

A Member holding the floor may not be interrupted by a motion to rise even though he has not yet begun to speak. 8 Cannon § 2370. A Member may not, in time yielded to him for general debate, move that the Committee rise (90–1, May 25, 1967, p 14121) or yield to another for such a motion (81–2, Feb. 22, 1950, p 2178). But the majority or minority member controlling the time for general debate may yield for a motion that the Committee rise, and he may do so without losing his right to continue at the next sitting of the Committee on the same matter. 5 Hinds §§ 5012, 5013.

As to precedence of a motion to rise and report a general appropriation bill, if offered by the Majority Leader, over a limitation amendment, see § 21, supra.

§ 29. Reporting to the House

Generally

When a matter is concluded in the Committee of the Whole, it is reported to the House. The permission of the House is neither required nor sought when the Chairman reports on a measure; the report is made and received as a matter of course, and is then before the House for action. *Manual* § 334. When the Committee rises without concluding the matter, the Chairman reports that they ''have come to no resolution thereon.'' Under this procedure the Chairman does not report the measure back to the House. Deschler Ch 19 § 21.4. The measure remains as unfinished business for subsequent consideration in the Committee. § 19, supra.

The Speaker recognizes only reports from the Committee of the Whole made by the Chairman thereof. 5 Hinds § 6987. The Speaker has no official knowledge of proceedings in the Committee beyond those reported by its Chairman. And a matter alleged to have arisen therein but not reported may not be brought to the attention of the House. 8 Cannon §§ 2429, 2430.

§ 30. House Action on Committee Reports

Generally

When the Committee of the Whole reports to the House, the House usually acts at once on the report without reference to select or other committees. *Manual* § 326. The recommendation of the Committee being before the House, the motion to carry out the recommendation is usually considered as pending without being offered from the floor. 4 Hinds § 4896.

The recommendation of the Committee may be favorable or adverse, and the bill may be reported with or without amendments:

> CHAIRMAN: Mr. Speaker, the Committee of the Whole House on the state of the Union, having had under consideration the bill H.R. _____, directs me to report it back to the House with sundry amendments and with the recommendation that the amendments be agreed to and the bill as amended do pass.
>
> THE SPEAKER: The gentleman from _____ reports that the Committee of the Whole House on the state of the Union, having had under consideration the bill H.R. _____, directs him to report. . . .

House action on amendments reported from the Committee of the Whole, including the demand for separate votes, see AMENDMENTS. For

steps to be taken in the passage of a bill in the House, see PREVIOUS QUESTION and READING, PASSAGE, AND ENACTMENT.

Recommittal to the Committee of the Whole

Bills are sometimes recommitted to the Committee of the Whole as the result of the action of the House (4 Hinds § 4784) or on motion either with or without instructions (5 Hinds §§ 5552, 5553). If the bill is reported from the Committee with an adverse recommendation, and such recommendation is disagreed to by the House, the bill stands recommitted to the Committee without further action by the House, unless the bill is disposed of pursuant to a motion to refer. *Manual* §§ 875. When a recommendation of the Committee that the enacting clause of a bill be stricken is rejected by the House, the House, without motion, resolves itself into the Committee of the Whole for the further consideration of the bill. *Manual* § 876a; 7 Cannon § 943; 89–1, Sept. 29, 1965, p 25418; 90–1, Apr. 6, 1967, p 8611.

Conferences Between the Houses

I. Generally

II. Conference Managers

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IV. Conference Reports

A. Generally; Form

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8 Cannon §§ 3209–3332
Manual §§ 530–559, 621, 701e, 812, 827–829, 867, 909–913d

I. Generally

§ 1. In General; Purpose

Generally

Before a measure can become law, both Houses must agree to the same bill—either a House bill or a Senate bill—and they must agree on each provision of the bill. 5 Hinds §§ 6233–6240. Although the two Houses may pass similar measures on the same subject, neither can become law unless both Houses pass the same numbered bill, with the identical text. 4 Hinds § 3386.

In many cases disagreements between the House and Senate over the provisions in a bill can be resolved through action on amendments that are messaged back and forth between the Houses. Such action is taken in the expectation that one House will eventually concur (or recede and concur)

with the amendments of the other House and pass the bill. (See SENATE BILLS; AMENDMENTS BETWEEN THE HOUSES.) Another approach aimed at reconciliation is through a conference committee, consisting of managers from each Chamber, with authority to report on negotiated agreements. Sometimes these procedures are pursued simultaneously: one House will (1) concur as to certain amendments and (2) insist on disagreement as to other amendments and request a conference thereon. 5 Hinds §§ 6287, 6401. If a conference fails to reconcile the differences, and reports this fact back to the two Houses, motions to dispose of any amendments remaining in disagreement are permitted. §§ 36–38, infra.

The request for a conference is made by the House in possession of the papers. § 4, infra. The House receiving the request may accept or agree to the conference or it may disregard the request and act on the pending unresolved amendments. 5 Hinds §§ 6313–6315. Or it may simply recede from disagreement, thereby rendering a conference unnecessary if no further issues remain to be disposed of between the Houses. 5 Hinds §§ 6316–6318. It also has the option of postponing action on the request to a time certain or indefinitely. 5 Hinds § 6199.

§ 2. Questions Sent to Conference

It was Jefferson's view that a House-Senate conference may be sought ''in all cases of difference of opinion between the two Houses on matters depending between them.'' *Manual* § 530. Conferences between the two Houses are usually held over differences as to amendments to a particular bill. 5 Hinds § 6254. On occasion, several different bills have been sent to a single conference. 92–1, Nov. 18, 1971, p 42046. Differences over a joint or concurrent resolution may also be sent to conference. 5 Hinds §§ 6258, 7063.

House-Senate conferences have sometimes been sought to resolve questions unrelated to any pending bill or other legislative proposition. Conference committees have on rare occasions been used to resolve differences as to:

- The prerogatives of the two Houses in the origination of revenue measures. 2 Hinds §§ 1487 *et seq.*
- The instructions given by one House to its managers. 5 Hinds § 6401.
- The procedures to be followed in an impeachment proceeding. 3 Hinds § 2304.
- The time for the convening of the next session of Congress. 5 Hinds §§ 6255 *et seq.*
- Papers in the nature of petitions. 5 Hinds § 6263.

§ 3. Sending to Conference

Generally; By Unanimous Consent

Amendments in disagreement between the Houses may be sent to conference by unanimous consent. The disagreement may relate to a Senate amendment (6 Cannon § 732) or to an insistence by the House on its own amendment. 97–2, Mar. 16, 1982, p 4227.

> MEMBER: Mr. Speaker, I ask unanimous consent to take from the Speaker's table the bill H.R. _____, with the Senate amendments thereto, disagree to the amendments, and ask a conference with the Senate [or agree to a conference asked by the Senate] on the disagreeing votes of the two Houses.

By Motion

A matter may be sent to conference pursuant to a motion permitted by House Rule XX clause 1 where the motion has been authorized by the committee (or committees) to which the bill was referred. *Manual* § 827. See 94–2, Aug. 26, 1976, p 27831; 95–1, Oct. 12, 1977, p 33433. The motion is privileged at any time the House is in possession of the papers if the appropriate committee has authorized the motion and if the Speaker in his discretion recognizes for that purpose. 94–1, Mar. 20, 1975, p 7646. These restraints are intended to prevent the use of that motion as a dilatory tactic. 92–2, Oct. 3, 1972, pp 33502, 33509.

Initial Senate amendments may be taken from the Speaker's table and sent to conference by motion under this rule. 91–2, July 9, 1970, pp 23518, 23524; 92–1, June 28, 1971, pp 22406–13, 22429. The motion permitted by the rule may also be raised at subsequent stages of the amendment process between the Houses, and include a motion to disagree to a Senate amendment to a House amendment to a Senate bill and request a conference (91–2, Dec. 17, 1970, p 42195; 92–2, Mar. 8, 1972, p 7540) or a motion to insist on a House amendment to a Senate amendment to a House bill and request a conference (*Manual* § 827).

A Member making a motion to send a bill to conference under this rule is recognized for one hour and is in control of the debate on the motion. 90–2, July 29, 1968, p 23935; 91–2, Mar. 3, 1970, p 5722; 92–2, Aug. 1, 1972, pp 26153, 26156. When the previous question is ordered on the motion, further debate may be had on it only by unanimous consent. 91–2, July 9, 1970, pp 23518, 23524.

The rule requires a separate committee authorization with respect to each particular bill to be sent to conference. Moreover, where a measure has

been reported by two or more committees, each committee must authorize the motion sending it to conference. 95–2, Sept. 26, 1978, p 31623.

Motions to send a measure to conference pursuant to Rule XX clause 1 are generally made by the chairman of the legislative committee with primary jurisdiction over the measure, acting by direction of that committee. 93–1, Mar. 28, 1973, pp 10032–34. See also 92–1, June 28, 1971, pp 22406–13; 93–1, June 5, 1973, p 18116. He rises and addresses the Chair:

> Mr. Speaker, in accordance with rule XX of the House rules and by direction of the Committee on _____ I move to take from the Speaker's table the bill (H.R. _____) with Senate amendments thereto, disagree to the Senate amendments and agree to the conference asked by [or ask conference with] the Senate.

A motion to send a bill to conference may not be amended to include instructions to House conferees; instructions are properly offered by separate motion following the adoption of the motion to go to conference and before managers are appointed. 92–1, Oct. 19, 1971, pp 36832–35. Instructions, see §§ 11 *et seq.*, infra.

§ 4. — When in Order; Stage of Disagreement

Generally

Under the former practice, it was customary to allow the House insisting on its amendment (the other House having disagreed thereto) to request a conference. 5 Hinds §§ 6278–6280. Under the modern practice, a conference may be requested as soon as one House has either disagreed to an amendment of the other or has insisted on its own amendment (5 Hinds §§ 6273–6277). In any event, the request for a conference must always be by the House which is in possession of the papers. *Manual* § 530.

Motions

A motion to disagree or insist and request a conference is in order (subject to preferential motions) before or after the Houses have reached the stage of disagreement if made pursuant to Rule XX clause 1. See *Manual* §§ 528, 535, 827. See also SENATE BILLS; AMENDMENTS BETWEEN THE HOUSES. That rule was amended in 1965 to provide that such motion ''shall always be in order'' if the Speaker recognizes for that purpose and if the motion is made by direction of the committee with jurisdiction. *Manual* § 827. This provision has been held to supersede earlier precedents precluding the motion to go to conference until the stage of disagreement had been reached, the Speaker ruling them to be inapplicable to motions under clause

1 Rule XX to disagree or insist and go to an initial conference with the Senate. 92–2, Aug. 1, 1972, pp 26153, 26156.

Once a motion to request a conference has been rejected, its repetition at the same stage of the proceedings, no other motion to dispose of the matter in disagreement having been considered, has not been permitted. 5 Hinds § 6325. However, a motion under Rule XX clause 1 may be repeated, if again authorized by the committee concerned, and if the Speaker again agrees to recognize for that purpose, even though the House has once rejected a motion to send the same matter to conference. *Manual* § 535.

Unanimous-consent Requests

A unanimous-consent request to seek a conference is in order even though the House and Senate have not yet reached the stage of disagreement. Indeed, on rare occasions, the House by unanimous consent has ''deemed'' a House bill with *possible* Senate amendments sent to conference prior to Senate passage of the bill with amendments, in order to permit conferees to be appointed and to formally meet if the House is not in session. 97–2, Dec. 18, 1982, p 32137; 98–1, Mar. 23, 1983, p 6824.

§ 5. Effect of Special Rules

Amendments may be sent to conference pursuant to a special rule from the Committee on Rules. 4 Hinds §§ 3242–3249. The special rule may or may not preclude intervening motions, and may direct the Speaker to appoint the managers. 4 Hinds § 3242. The special rule may:

- Take a House bill with Senate amendments from the Speaker's table and send it directly to conference. 7 Cannon § 826.
- Make in order a motion to take a bill with Senate amendments from the Speaker's table, disagree to the amendments, and request a conference. 7 Cannon § 822.
- Provide for consideration of Senate amendments and for a motion to agree to a conference, and for appointment without instructions to the managers. 4 Hinds §§ 3243, 3244.
- Discharge a committee from consideration of a bill with Senate amendments and ask for, or agree to, a conference thereon. 7 Cannon §§ 820, 821.

II. Conference Managers

§ 6. In General; Appointment of Managers

Generally

Appointments of Members to serve as managers on the part of the House at a conference are made by the Speaker pursuant to Rule X clause 6(f). *Manual* § 701e. (The terms ''manager'' and ''conferee'' are used synonymously in the modern precedents and are so used in this article.) The Speaker observes the guidelines set forth in Rule X as to the designation of managers. That rule requires the Speaker to appoint:

- A majority of Members who generally support the House position, as determined by the Speaker.
- Members who are primarily responsible for the legislation.
- To the fullest extent feasible the principal proponents of the major provisions of the bill as it passed the House.

These guidelines permit the exercise of broad discretionary powers by the Speaker in making appointments (95–1, Oct. 12, 1977, p 33434), and he may specify the legislative issues on which individual managers are to confer. 91–2, Mar. 3, 1970, p 5713; 92–1, Nov. 30, 1971, p 43422; 96–1, Sept. 14, 1979, p 24554.

Number of Managers

In the early practice of the House, three Members were usually appointed to a conference by the Speaker. 5 Hinds § 6336. Today, the number of Members to be designated is at the discretion of the Speaker (8 Cannon § 3221) and he may appoint as many as 60 or more conferees, depending on the complexity of the bill and the number of committees with jurisdiction. (See for example 99–2, Feb. 6, 1986, p 1943.) The number of conferees appointed by one House does not determine the number to be appointed by the other. A motion to instruct the Speaker as to the number of conferees to be appointed is not in order. 8 Cannon § 3221.

The fact that the managers on the part of one House outnumber those on the part of the other does not affect the conference outcome. There are only two votes in conference—a vote of House managers and, separately, a vote of Senate managers. Conference agreements are reached when a majority of House managers agree with a majority of Senate managers, the managers of one House having voted separately from those of the other. 5 Hinds § 6334. Conference meetings, see § 10, infra.

Time of Appointment

Conferees are usually appointed by the Speaker immediately after the request for a conference is granted, but they may be appointed on a subsequent day. 95–2, Sept. 27, 1978, p 32028; 95–2, Sept. 29, 1978, p 32699. In one instance, the Speaker did not announce his appointment of conferees until the second session on a bill on which the House had requested a conference in the first session. 99–2, Feb. 6, 1986, p 1943.

§ 7. Committee Representation

The Speaker in making his appointments to a conference normally consults with the chairman of the committee having jurisdiction over the bill. Members of that committee are ordinarily designated as managers. 89–2, Oct. 14, 1966, p 26996. The Speaker may make such appointments without regard to committee seniority. 99–2, July 16, 1986, p 16705. Where the matter falls within the jurisdiction of two committees of the House, the Speaker may name members from both committees as managers. 95–2, Oct. 4, 1978, p 33568; 96–1, July 27, 1979, p 20993. Where the measure falls within the jurisdiction of several committees and/or subcommittees, the Speaker has exercised his discretion to appoint Members in such a way as to represent the interests of the various committees involved. 99–1, July 11, 1985, p 18552. On a bill reauthorizing the so-called environmental ''Superfund,'' the Speaker's appointments included more than 50 conferees from six standing committees, with most conferees being given designated areas of responsibility. 99–2, Feb. 6, 1986, p 1943.

The Speaker may appoint members from a nonreporting committee as conferees on a provision in a Senate measure within that committee's jurisdiction. 99–2, July 24, 1986, p 17644. And the Speaker may, after appointing general conferees from the reporting committee on all Senate provisions, appoint additional conferees from a nonreporting committee on a specified section. 99–2, Oct. 8, 1986, p 29702.

§ 8. Changing or Adding Managers; Removal or Resignation

At any time after the appointment of a conference committee, the Speaker may remove a conferee or appoint additional conferees. Rule X clause 6(f). In making additional appointments, the Speaker may specify that a conferee be authorized to act only with respect to a certain provision (96–1, Aug. 2, 1979, p 22101), or that additional conferees from certain committees act solely on matters within those committees' jurisdictions (99–1, Oct. 24, 1985, p 28743). Under clause 6(f), the Speaker may supplement an appointment of conferees by modifying the array of separate panels and by

further specifying the subject matter to be considered by such panels. 103–1, July 20, 1993, p ____.

Where several conferences are held on the same bill, managers may be reappointed or changed at the discretion of the Speaker. 5 Hinds §§ 6341–6368. Although reappointment is common under the modern practice (*Manual* § 537), sometimes a change is necessary to enable a developing sentiment of the House to be accurately represented. 5 Hinds § 6369. Motions to discharge and appoint new conferees, see § 14, infra.

Vacancies on a conference committee are filled through appointment by the Speaker. 5 Hinds § 6372; 8 Cannon § 3228. The Speaker may appoint a conferee to fill a vacancy caused by the death or ill health of another Member (93–1, Nov. 7, 1973, pp 36222, 36223; 98–2, Mar. 21, 1984, p 6249), or where a Member resigns as conference manager. However, House managers are excused from service only by action of the House. 91–1, Oct. 23, 1969, p 31198. Unanimous consent is required to excuse a Member from service as a conferee. 95–2, Sept. 25, 1978, p 31329. The Speaker may appoint the successor conferee with all or part of the authority of the original conferee. 98–2, Mar. 21, 1984, p 6249.

Usually a conferee resigns by sending a letter of resignation to the Speaker which is laid before the House. But a conferee may be excused by unanimous consent at the request of another Member, particularly where time is of the essence. 91–1, Oct. 23, 1969, p 31198; 92–2, July 24, 1972, p 24864; 93–1, Dec. 10, 1973, p 40500.

Managers have resigned from conference committees because of policy differences with other managers. In one instance, a Member declared that his resignation was based on the fact that other House conferees had agreed to a motion in conference limiting their participation to specified portions of the matters committed to conference, though originally all Members had been appointed without restriction. The Member's resignation was accepted by unanimous consent. 94–1, Nov. 11, 1975, pp 35980, 35981.

§ 9. Power and Discretion of Managers

Generally

There are limitations on the authority of the managers with respect to the legislative matters they may address. The managers:

- May not change text that has already been agreed to by both Houses. 5 Hinds §§ 6417, 6418, 6420.
- May not address new items or a new subject not committed to the conference. 5 Hinds §§ 6407, 6408; 8 Cannon §§ 3254, 3255.
- Must confine themselves to matters that are within the scope of the difference between the House position on the one hand and the Senate position on the other. 94–2, Oct. 1, 1976, p 35102.

These limitations stem from the fundamental principal that when a bill is sent to conference, matters in disagreement between the Houses—and only matters in disagreement between the Houses—are before the conferees. See 86–1, June 23, 1959, pp 11599, 11615; 93–2, Dec. 20, 1974, p 41850. This is so notwithstanding House or Senate messages to the contrary. 8 Cannon § 3253. A matter not within the scope of the differences committed to the conference lies beyond the authority of the managers even though germane to the question at issue. 5 Hinds § 6419.

The conferees have slightly greater editorial latitude when the disagreement arises over an amendment in the nature of a substitute for the entire text of the bill of the other House. 5 Hinds § 6424; 8 Cannon §§ 3248, 3263. The managers may then draft an entirely new version—called a conference substitute—which replaces both the original proposition and the amendment in the nature of a substitute. See 5 Hinds § 6465. However, the authority of managers in such cases is subject to specified restrictions. A House rule permits a ''germane modification'' of the matter in disagreement, but proscribes the presentation of ''specific additional'' topics not committed to conference. The controlling rule further provides that the report of the managers must not include matter not committed to the conference by either House, nor may their report include a modification of any specific matter committed to the conference if that modification is beyond the scope thereof. Rule XXVIII clause 3. (*Manual* § 913a.) As grounds for points of order against the report, see § 22, infra. For the use of special rules to protect against a point of order for exceeding ''scope,'' see § 20, infra.

Differences as to Time Periods

When the two Houses fix different periods of time for certain legislative action, the conferees have latitude to compromise only between the two time frames, and may not exceed the longer or go below the shorter. 8 Cannon

§ 3264. 90–1, Dec. 11, 1967, pp 35811–33, 35841. Likewise, where the Senate has amended a House-passed bill to change the effective date therein, the authority of the conferees on the bill is limited to the time frame between the dates in each version. And where the dates contained in both versions have since passed, the conferees must report the Senate amendment back in technical disagreement so that the effective day can be reconsidered. 91–2, Mar. 11, 1970, pp 6793, 6795.

Differences as to Numbers or Amounts

Where the legislative differences between the two Houses on a measure involve numerical figures, managers at conference are limited to the range between the highest figure proposed by one House and the lowest proposed by the other. If, for example, the House proposes a tariff rate of 30% for a certain product and the Senate proposes a 35% tariff, the managers may agree on 30% or 35% or any tariff falling within that range; but they may not agree on a tariff that is less than 30% or more than 35%. 8 Cannon § 3263. Similarly where sections of a conference report contain higher entitlements for certain veterans' benefits than those contained in either the House bill or in the Senate amendment, the conferees may be held to have exceeded their authority. 93–2, Aug. 22, 1974, pp 30050–52. By the same token, conferees may report back in total disagreement where the informal decisions reached by the conferees would have exceeded the scope of the differences committed to conference by *reducing* certain aggregate totals below those in either the House or the Senate version. 95–1, Sept. 13, 1977, p 29021.

Amendments to Existing Law

Where one House has amended an existing law and the other House has implicitly taken the position of existing law by remaining silent on the subject, the scope of differences committed to conference lies between those issues presented in the amending language on the one hand and the comparable provisions of existing law on the other. 95–2, Feb. 28, 1978, p 5010. In such cases, the Speaker may examine existing law to determine whether House conferees have remained within the scope of the differences committed to conference. 94–2, Apr. 13, 1976, p 10803.

Extending Authority of Managers by Resolution

The managers of a conference are sometimes permitted to take up a matter not in issue between the Houses pursuant to a concurrent resolution. 5 Hinds §§ 6437–6439. Concurrent resolutions permitting managers to consider matters not technically committed to conference are made in order by

unanimous consent. 93–2, Dec. 17, 1974, p 40472. This procedure has been used to permit the insertion of new matter in a Senate amendment to a House bill already sent to conference. 94–2, Sept. 2, 1976, p 28969.

§ 10. Meetings

Generally; Voting

Due notification of appointments and a formal meeting of named managers should precede the issuance of their report. The Speaker may decline to allow House consideration of the report if these formalities are not observed. 5 Hinds § 6458.

The managers of the two Houses while in conference vote separately, the majority in each body determining the attitude to be taken toward the proposition(s) at issue. 5 Hinds § 6336. When the report is made, the signatures of a majority of the managers from each House are sufficient. § 18, infra.

Meetings as Open or Closed

Rule XXVIII clause 6 was amended in 1977 to require all conference meetings to be open to the public except where the House by roll call vote determines otherwise. *Manual* § 913d; 95–1, Jan. 4, 1977, p 53. The rule permits a point of order in the House against the report if the House managers fail to meet in open session as required. See *Manual* § 548. If the point of order is sustained, it results in rejection of the report and in an automatic request for a new conference, and it permits the appointment of new conferees without intervening motion to instruct. 96–2, Mar. 25, 1980, p 6430. Thus, the conferees having failed to meet formally in open session after appointment, the report, though signed, is subject to automatic recommittal under the rule. 97–2, Dec. 20, 1982, p 32896.

Motions to Close a Conference Meeting

A motion to close a conference meeting is privileged for consideration in the House after the House has agreed to go to conference and the Speaker has appointed conferees. The motion is debatable for one hour under the control of the Member making the motion, and must be voted on by a roll call vote. 95–1, July 21, 1977, p 24365; 95–2, Apr. 13, 1978, p 10128; 97–2, Aug. 3, 1982, p 18946. The motion may be modified by the Member offering the motion only by unanimous consent, and may be amended only if that Member yields for that purpose (or the previous question is rejected). 95–1, May 23, 1977, pp 15880, 15881. The motion may provide for exceptions or limitations, such as a stipulation that the meeting may be closed only when certain matters are under discussion or that any sitting Member

of Congress shall have the right to attend such meeting. 95–1, July 21, 1977, pp 24365, 24366; 95–2, July 14, 1978, p 20960.

Points of Order as to Meeting Irregularities

There are no formal House rules that govern procedures to be followed in conducting a meeting of the conferees. The conferees offer motions or consider and debate propositions according to their own informal guidelines or ad hoc rules. The Speaker will not normally sustain a point of order against a conference report signed by a majority of House conferees based upon irregularities at the conference meeting. 96–2, Mar. 25, 1980, p 6430. Nor will the Speaker look behind the signatures to determine whether the report has incorporated all the agreements informally made in conference. 93–1, Dec. 17, 1973, pp 42034, 42035. In one instance, the Speaker overruled a point of order against a conference report signed by a majority of the conferees, although the Member raising the point of order alleged that the form of the report was inconsistent with a motion agreed to in the conference meeting. 94–2, Sept. 28, 1976, p 33019.

III. Instructions to Managers; Motions

§ 11. In General

Generally

Instructions are used primarily to indicate priorities considered important to the House or to identify positions or amendments it would support or oppose. The House may instruct its conferees to:

- Insist on a conference report achieving four broadly worded goals. 99–2, July 16, 1986, pp 16703, 16705.
- Insist on a portion of a House amendment to a Senate bill. 93–1, July 24, 1973, pp 25539–41.
- Agree to a numbered Senate amendment with an amendment. 97–2, June 9, 1982, p 13039.
- Adhere to certain provisions in a House-passed bill. 96–1, July 30, 1979, p 21302; 96–1, Dec. 19, 1979, p 36895.
- Disagree to one of several Senate amendments (notwithstanding that the House has just disagreed to all Senate amendments in toto). 91–1, Oct. 9, 1969, p 29315.
- Insist on holding conference sessions under just and fair conditions. 74–1, Aug. 1, 1935, p 12272.

One House has no jurisdiction over conferees appointed by the other. Instructions to conferees apply only to managers on the part of the House giving the instructions. 8 Cannon §§ 3241, 3242.

Limitations on Instructions

Instructions may not direct conference managers to do that which they might not otherwise do (5 Hinds §§ 6386, 6387; 8 Cannon §§ 3235, 3244), such as to change a part of a bill not in disagreement (5 Hinds §§ 6391–6394). Instructions may not:

- Change the text to which both Houses have agreed. 5 Hinds § 6388.
- Direct the conferees to agree to something not committed to conference. 96–2, Feb. 28, 1980, p 4305.
- Include appropriations on a legislative bill. Rule XXI clause 2.
- Include matter outside the scope of the conferees' authority (Rule XXVIII clause 3). 93–1, Nov. 13, 1973, pp 36835, 36847.
- Agree to the deletion of certain language committed to conference if the effect of such deletion results in broadening the scope of the matter in disagreement. See 92–1, Dec. 14, 1971, pp 46779–80.
- Direct conferees to concur in a Senate amendment with an amendment not germane thereto. 8 Cannon § 3235.

§ 12. Motions to Instruct

Generally

The opportunity for the House to instruct conferees arises at three distinct stages of the legislative process: (1) at the time the House votes to go to conference, (2) after the expiration of 20 calendar days, the conferees having failed to report (§ 14, infra), and (3) when a conference report is recommitted to conference (§ 15, infra).

On Going to Conference

After the House has voted to go to conference with the Senate the House may consider a timely motion to instruct its managers. A motion to instruct the House managers at a conference is in order after the House has agreed to a conference and before the appointment of the conferees. 5 Hinds §§ 6379–6382; 93–2, Dec. 16, 1974, pp 40174, 40175; 97–1, Nov. 4, 1981, pp 26582, 26586; 98–1, Oct. 25, 1983, p 29229. The motion is not in order until the House has voted to ask for or agree to a conference. 91–2, Mar. 3, 1970, p 5722. Only one motion to instruct conferees is in order at this stage. 8 Cannon § 3236. 90–2, May 29, 1968, p 15499; 96–1, Dec. 18, 1979, p 36763.

Tabling of Motion

A motion to instruct House managers at a conference is subject to the motion to table. 91–1, Oct. 9, 1969, p 29315; 92–1, July 27, 1971, pp 27305–08, 27311; 92–2, Oct. 11, 1972, p 34948. The motion to lay the motion to instruct on the table is in order after the motion to instruct has been read or after debate thereon. If the motion to table is voted down, the question next occurs on ordering the previous question on the motion to instruct. 87–1, Aug. 8, 1961, pp 14957, 15001; 91–1, Dec. 18, 1969, pp 39826–30; 91–2, July 9, 1970, pp 23325–28.

Withdrawal or Postponement of Motion

A motion to instruct the House managers at a conference has been withdrawn after debate thereon. 91–1, Dec. 11, 1969, pp 38543–45. And the postponement of consideration of such a motion is permitted by unanimous consent. 95–1, June 16, 1977, pp 19414, 19415.

§ 13. — Debate on Motion; Recognition and Amendments

Generally

A motion to instruct the managers on the part of the House at a conference is debatable under the hour rule. 91–1, Dec. 11, 1969, p 38543; 98–1, Nov. 15, 1983, p 32686. The time is equally divided or allotted pursuant to Rule XXVIII clause 1(b). No additional debate thereon is in order unless the previous question is rejected or unless the Member having the floor yields for amendment. 98–1, Nov. 15, 1983, p 32686.

The hour of debate time on a motion to instruct is inapplicable where a motion to lay that motion on the table is adopted prior to debate. 94–2, Aug. 26, 1976, p 27832.

Recognition to offer a motion to instruct House conferees is the prerogative of the minority, and the Speaker recognizes the ranking minority member of the committee reporting the bill when that member seeks recognition to offer the motion. 92–1, Oct. 19, 1971, pp 36832–35; 93–2, Dec. 16, 1974, pp 40174, 40175.

Amendments to Motion

No amendment to a motion to instruct is in order unless the previous question is rejected or unless the Member having the floor yields for amendment. 98–1, Nov. 15, 1983, p 32686. While the previous question takes precedence over the motion to amend a motion to instruct conferees (93–1, July 24, 1973, pp 25539–41), the motion to instruct is subject to amend-

ment if the previous question is rejected. 92–1, Oct. 19, 1971, pp 36832–35; 96–1, Dec. 18, 1979, p 36774; *Manual* § 541.

§ 14. Motions After Failure of Managers to Report

Where conferees have been appointed for 20 calendar days (or for 36 hours during the last six days of a session) and have failed to file a report, motions to instruct the House managers—or discharge and appoint new ones—are in order. Rule XXVIII clause 1(c). The Member making such a motion must give a day's notice under the rule. *Manual* § 910. The privilege of the motion to instruct conferees under this clause is equal to that of the motion to suspend the rules on a suspension day. 100–2, Mar. 1, 1988, pp 2749, 2751, 2754. The 20-day period runs from the time that the conference committee has been formed by appointment in both Houses. See 97–1, May 20, 1981, p 10319.

The practice which precludes more than one motion in the House to instruct conferees prior to their appointment (§ 12, supra) is not applicable to motions to instruct (or discharge and appoint new) conferees who have failed to report to the House within the 20-day period. 93–2, July 22, 1974, pp 24448, 24449. Indeed, a motion to instruct House conferees who have failed to report for 20 days is in order even though its instructions are the same as those given to the conferees at the time the bill was sent to conference. 92–2, May 11, 1972, pp 16838–42.

§ 15. Instructions in Motions to Recommit

A motion to recommit a conference report (§ 35, infra) may include instructions to the House conferees. 8 Cannon § 3241. A report may be recommitted with instructions to insist on disagreement (90–1, Oct. 4, 1967, pp 27727–30, 27734–38) or take other action on an amendment contained in the report (94–2, Sept. 28, 1976, p 33034). But the motion may not instruct House conferees to include matter which is beyond the scope of differences committed to conference (97–1, Nov. 22, 1981, p 28747) or which would be inadmissible if offered as an amendment in the House (see 93–1, Dec. 19, 1973, p 42565).

§ 16. Instructions as Binding on the Managers

Instructions by the House to its conferees are advisory in nature and are not binding as a limitation on their authority. 90–2, May 29, 1968, p 15499. A failure of conferees to adhere to such instructions does not render their report subject to a point of order. 5 Hinds § 6395; 8 Cannon §§ 3246–3248; 97–1, Oct. 29, 1981, p 26049. There is no rule of the House requiring

conferees to seek further guidance if they are unable to comply with instructions suggested to them. 92–2, June 8, 1972, p 20282. For these reasons, the Speaker may not rule a report out of order because it is in contravention of instructions imposed on House conferees; it is for the House to determine by its vote on the report whether to accept or reject it, or to recommit it. 92–2, June 8, 1972, p 20282. Voting on the report, see § 36, infra.

IV. Conference Reports

A. Generally; Form

§ 17. In General; Preparation and Filing

Generally; Partial Reports

A conference report contains the recommendations of the conference committee to the two Houses as to the disposition of the matter in disagreement. The report may recommend, for example, that the House (or Senate) recede from disagreement to a certain numbered amendment, or that it agree to a certain amendment with an amendment. The report will normally identify those amendments on which the committee has been unable to agree. Managers may report an agreement as to a portion of the numbered amendments in disagreement, leaving the remainder to be disposed of by subsequent House action. 5 Hinds §§ 6460–6464. Disposition of amendments remaining in disagreement between the Houses, see SENATE BILLS; AMENDMENTS BETWEEN THE HOUSES.

Under certain circumstances managers may develop an entirely new bill on a subject in disagreement, in which case the adoption of the report completes action on the bill. 5 Hinds §§ 6465–6467; *Manual* § 543.

A conference report is jointly prepared by the managers from the House and those from the Senate. The report must be signed by a majority of the managers of the House and a majority of the managers on the part of the Senate. § 18, infra. Minority views are not in order. 90–1, Dec. 4, 6, 1967, pp 34721, 35135–37. The managers in the minority have no authority to make a formal report concerning the conference. 5 Hinds § 6406.

A conference report must be filed and printed in the Record. See *Manual* § 911. Filing is necessary to initiate the three-day waiting period that must precede the consideration of the report on the floor of the House. § 30, infra. Errors in the text appearing in the Record may subject consideration of the report to a point of order. 8 Cannon § 3298. The filing of the report while the House is in session is privileged. 90–2, Aug. 1, 2, 1968, pp

25027–43. Permission to file and print a report when the House is not in session is frequently given by unanimous consent. 86–1, July 30, 1959, p 14742; 87–1, Aug. 3, 1961, p 14544; 87–2, July 26, 1962, p 14841.

Subsequent conference reports on the same subject must adhere to these same formalities. Notwithstanding recommittal of a conference report to a committee of conference, the subsequent conference report is filed as privileged, given a new number and otherwise treated as a new and separate report. 88–1, May 14, 1963, p 8502.

Explanatory Statements

Conference reports are to be accompanied by an explanatory statement prepared jointly by the conferees on the part of the House and the conferees on the part of the Senate. This statement must inform the House as to the effect which the matter contained in the report will have upon the pending measure. Rule XXVIII clause 1(d). *Manual* § 911. This statement is signed by a majority of the managers of each House. 91–2, May 12, 1970, pp 15202–17; 92–1, Dec. 14, 1971, pp 46791–801.

A report may not be received without the accompanying statement. *Manual* § 911. The Speaker may require the statement to be in proper form (5 Hinds § 6513), but it is for the House and not the Speaker to determine its sufficiency (5 Hinds §§ 6511, 6512).

Although minority views are not in order on a conference report, the majority of the managers may, in the statement accompanying the report, indicate exceptions taken or objections raised by certain conferees who signed with the majority. 90–1, Dec. 4, 6, 1967, pp 34721, 35135–37; 94–1, Dec. 8, 1975, p 39097.

§ 18. Signing and Signatures

Conference reports must be signed by a majority of the managers of the House and by a majority of the managers of the Senate. 5 Hinds §§ 6497–6502. Reports containing insufficient signatures are subject to a point of order and will not be received. 5 Hinds § 6497; 8 Cannon § 3295. In the modern practice reports are made in duplicate for the two Houses, the House managers signing first the report for their House and the Senate managers signing the other report first. 5 Hinds §§ 6246, 6499, 5000, 6504. The name of an absent manager may not be affixed to a conference report; but the House and Senate may by concurrent action authorize him to sign the report after it has been acted on. 5 Hinds § 6488.

Signatures With Qualifications

Managers have been permitted to sign a conference report with a conditional approval or dissent. 5 Hinds §§ 6489–96, 6538. But recent precedents weigh against allowing such signatures to be counted with the majority in support of the report. This is consistent with the general rule that conferees may not file separate or minority views. Managers on the part of the House must act on a conference report as a whole, either by signing it to indicate their support for all that is included in the report or by declining to sign it to indicate their opposition to any part thereof. See 8 Cannon § 3302; see also 102–1, Nov. 18, 1991, p ____.

§ 19. Correction of Errors

A technical correction appearing in a conference report may be made by the Clerk in the enrollment of the bill if authorized by concurrent resolution. 92–2, Oct. 10, 1972, p 34643. In one instance, a conference report and concurrent resolution making changes therein (by correcting the enrollment) were simultaneously adopted under a motion to suspend the rules. 98–1, Aug. 1, 1983, p 21925.

The inadvertence of the conferees in failing to dispose of an amendment to a title does not prevent the amendment from coming back to the House for disposition by motion or unanimous consent following adoption of the conference report. 94–2, Apr. 28, 1976, p 11598; 94–2, Sept. 10, 1976, p 29759.

B. Limitations on Reports; Points of Order

§ 20. In General

A conference report is subject to a point of order for failure to comply with one or more rules of the House when the report is called up for consideration in the House and before debate on it begins. 95–2, Oct. 12, 1978, p 36459. If the point of order is timely and the report is not protected by special rule or other House order, the report may be ruled out of order. 94–2, Sept. 23, 1976, p 32099. Raising points of order, see § 27, infra.

§ 21. Reports Exceeding Authority of Managers

A point of order will lie against a conference report on the ground that the conferees have agreed to a provision which was beyond the limits of their authority. 90–1, Dec. 11, 1967, p 35811. If the point of order is sus-

tained the entire report may be ruled out. 8 Cannon § 3256; *Manual* § 547. The report:

- Must not change text that has already been agreed to (5 Hinds §§ 6417, 6418, 6420).
- Must not address new items or a new subject not committed to conference (5 Hinds §§ 6407, 6408; 8 Cannon §§ 3254, 3255).
- Must be confined to matters that are within the scope of the differences committed to conference (94–2, Oct. 1, 1976, p 35102).

A matter not within the scope of the differences committed to the conference may not be included in the report even though germane to the question at issue. 5 Hinds § 6419.

The ruling out of a conference report on the ground that it contains a provision subject to a point of order because beyond the range of differences may not preclude subsequent consideration of the same provision in the House by motion. The bill and amendments are again before the House and, the stage of disagreement having been reached, motions relating to amendments and a further conference are in order. 94–2, Sept. 30, 1976, p 34085; 95–1, Oct. 14, 1977, p 33772. A matter ruled out as ''beyond scope'' may yet qualify as a germane amendment to a Senate amendment remaining in disagreement.

§ 22. — Conference Substitutes or Modifications

A conference report containing a substitute agreed to by the managers may not include matter not committed to the conference by either House. Clause 3 Rule XXVIII. (*Manual* § 913a.) Points of order under the rule are confined to language in the conference report and do not extend to expressions of intent in the joint statement. 94–2, Sept. 28, 1976, p 33023. The rule prohibits the inclusion in the report of additional topics not committed to conference by either House or which are beyond the scope of the differences committed to conference. 94–2, Sept. 27, 1976, pp 32719–21. Even a modification of a proposition will give rise to a point of order if it is beyond the scope of either the bill or the amendment as committed to conference. 92–1, Dec. 13, 14, 1971, pp 46596–602. The deletion of provisions ''not committed to conference'' because the text has been agreed to by both Houses or is identical in the bill and the amendment may also sustain a point of order. *Manual* § 527. The managers may eliminate specific words or phrases contained in either version and add words or phrases not included in either version only if they remain within the scope of their differences and do not incorporate additional topics, issues or propositions. 94–2, Sept. 28, 1976, pp 33020–23.

§ 23. Nongermane Senate Matter

A House rule permits a Member to raise a point of order against certain language in a conference report if such matter originated in the Senate but would have been considered as not germane if offered to the text when under consideration in the House. The same rule permits the House to vote on the question of whether such matter should be rejected or retained. Rule XXVIII clauses 4(a)–4(d). *Manual* § 913b. The point of order may be raised with respect to a Senate amendment, a conference substitute, or a provision in a Senate bill (if not included in the House-passed version). The point of order is in order before the report itself is read or debated. Clause 4(a).

If the Chair sustains a point of order that conferees have agreed to a nongermane Senate provision, a motion to reject that provision is in order pursuant to clause 4(b). This motion is debatable for 40 minutes, equally divided between the Member making the motion and a Member opposed. 98–2, Oct. 11, 1984, p 32219. Recognition is not based on party affiliation. 94–2, Jan. 29, 1976, p 1582. Other points of order cannot be made until after disposition of the motion to reject. 94–1, Dec. 15, 1975, p 40677.

If the motion to reject is not agreed to, the nongermane Senate matter is retained, and debate commences on the conference report itself. 98–2, Oct. 11, 1984, p 32219.

If the House votes in favor of the motion to reject the nongermane matter, the report itself is considered as rejected. Clause 4(d). Since a conference report must be acted on as a whole, and either agreed to or disagreed to in its entirety, rejection of a portion of a conference report as not germane results in the rejection of the entire report. 92–1, Nov. 10, 1971, pp 40479, 40481. The House then automatically proceeds to consider a motion to recede and concur with an amendment (consisting of that portion of the report not rejected) or to insist on its own amendment. Clause 4(d). *Manual* § 913b.

§ 24. Senate Appropriations on House Legislative Bill

The House managers may not agree to a Senate amendment providing for an appropriation on any bill other than a general appropriation bill unless specific authority to agree to such amendment is first given by the House. Rule XX clause 2. *Manual* § 829. Under this rule, where a House legislative measure has been committed to conference, and the conferees agree to a Senate amendment appropriating funds, the conference report thereon is sub-

ject to a point of order and may be ruled out. 87–2, Oct. 4, 1962, p 22332. This point of order:

- Applies only to Senate amendments which are reported from conference and not to appropriations reported in Senate legislative bills. 94–2, June 30, 1976, p 21633.
- Does not apply if House conferees were authorized to agree to the amendment by separate House vote. *Manual* § 829.
- Will not lie against a provision permitted by the House to remain in its own bill. 94–1, May 1, 1975, pp 12752, 12753.
- May be waived by special rule. § 28, infra.

§ 25. Senate Legislation on House Appropriation Bill

Language changing existing law in violation of Rule XXI clause 2(c)—often referred to as ''legislation on an appropriation bill''—may give rise to a point of order if it appears in a Senate amendment agreed to by the conference managers. The House managers may not agree to such an amendment unless specific authority to agree to the amendment is first given by the House by a separate vote. *Manual* §§ 829, 834. The purpose of this restriction is to prevent conference committees from using appropriation bills to legislate without the permission of the House. 7 Cannon § 1574.

Points of order arising under this requirement may be waived by a special rule from the Committee on Rules (§ 28, infra) or by unanimous consent (99–1, Dec. 16, 1985, p 36559).

Because of the point of order that will lie against the conferees' agreement to a Senate legislative amendment to an appropriation bill under the rules, it has become a customary practice to report such amendments in technical disagreement. The House first considers a partial report consisting of the matter agreed to in conference and not in conflict with Rule XXI, and then considers separately those amendments reported in real or technical disagreement. *Manual* § 829. Such Senate amendments are not subject to a point of order when reported from conference in disagreement, and may be called up for disposition by separate motion. 94–1, Dec. 4, 1975, p 38714. Under a rules' change adopted in 1993, one preferential motion to insist on disagreement to the Senate amendment is in order if offered by the House committee having jurisdiction thereof (Rule XXVIII clause 2(b)), if the original motion to dispose of the Senate legislative amendment offered by the House manager proposes to amend existing law.

§ 26. Budget Act Violations

Congressional action on legislation reported from a conference committee is subject to the Congressional Budget Act of 1974. *Manual* § 1007.

Points of order in the House against a conference report are in order under the 1974 Budget Act (as amended) where the Act restricts or prohibits:

- Consideration of spending, revenue, or debt-limit legislation for a fiscal year before a budget resolution for that year has been adopted. § 303(a).
- Consideration of measures within the jurisdiction of the House and Senate Budget Committees but not reported by those committees. § 306.
- Consideration of reconciliation legislation that recommends changes in Social Security. § 310(g).
- Consideration of measures providing new contract or borrowing authority not limited to amounts provided in appropriations acts. § 402(a).

A point of order under the Budget Act may also be in order where the conference report contains provisions in conflict with Budget Act requirements relating to:

- The allocation—to each committee with jurisdiction—of appropriate levels of budgetary spending authority. § 302(f).
- Measures that would cause certain budgetary levels to vary from those set forth in the applicable concurrent resolution on the budget. § 311(a).
- Authorization of funds beyond those provided for in advance in appropriation acts. § 401(a).
- Increases in the costs of federal intergovernmental mandates by amounts that exceed specified thresholds. § 425.

A conference report may be ruled out by the Speaker if he sustains a point of order against it under the Congressional Budget Act. 94–2, Sept. 30, 1976, pp 34074, 34075.

§ 27. Raising Points of Order

Generally

A point of order against a conference report comes too late after debate has been had on the report. 92–2, Oct. 18, 1972, p 37067. The point of order should be made when the report is called up for consideration and before debate thereon. 95–2, Oct. 12, 1978, p 36459. Where a reading is required, a point of order against the report is not entertained until after the report has been read, and cannot be reserved during a reading of the report. 94–1, Dec. 15, 1975, p 40671. If the report is ''considered as read'' because it has met the requirements for three-day availability and has been printed in the Record on the day filed, the report is considered as read. See *Manual* § 912d.

A point of order against a conference report must be reserved before the reading of the joint statement of the managers (86–1, June 23, 1959, pp 11599, 11615; 92–1, Dec. 13, 1971, p 46596), even if by unanimous

consent the joint statement is read in lieu of the report. 92–2, Jan. 25, 1972, p 1076; 92–2, June 8, 1972, p 20278.

Multiple Points of Order

The Chair may rule on all points of order raised against a conference report, whether they are made separately or at one time. 92–2, June 8, 1972, pp 20278–80. But the Chair entertains and rules on points of order which, if sustained, will vitiate the entire conference report before entertaining points of order merely against certain portions of the report. 94–2, Sept. 23, 1976, p 32099.

Where a point of order against a conference report is overruled, a second point of order may be pressed against the report providing that debate on the report has not intervened. 91–1, Dec. 19, 20, 1969, pp 40262, 40445–48.

Points of Order and the Question of Consideration

The question of consideration may be raised against a conference report before the Chair entertains points of order against the report. Ordinarily, the question of consideration should be put first on the ground that it is useless to argue points of order if the House is not going to consider the report; but a point of order should be decided before the question of consideration where the point of order is directed to the issue of whether the matter is privileged to come up for consideration in the first instance. See 94–2, Sept. 28, 1976, p 33018.

Under § 426 of the Budget Act, relating to enforcement in the House of points of order relating to unfunded or underfunded federal mandates, a question of consideration can be raised against a provision in a conference report which increases the costs of such mandates above levels specified in § 424. If the provision is precisely identified in the point of order, the House can then, by voting on the question of consideration, determine whether or not to allow the provision to remain in the conference report. See *Manual* § 1007 and § 426 of the Budget Act.

§ 28. Waiving Points of Order

By Special Rule

Points of order against a conference report—or against the consideration of a conference report—may be waived pursuant to a resolution reported by the Committee on Rules and adopted by the House. 99–1, Oct. 29, 1985, p 29328; 99–2, Oct. 15, 1986, p 31497. The resolution may waive all points of order or merely one or more specific points of order. Such a resolution may waive points of order against a conference report which has not been

filed for three days prior to its consideration, in violation of Rule XXVIII clause 2 (94–1, Dec. 17, 1975, pp 41325, 41328; 95–2, Oct. 14, 1978, p 38623). Other points of order that may be waived include :

- A provision not committed to conference as not included in either the pending Senate bill or the House amendment. 92–2, Jan. 25, 1972, p 1076.
- Matters beyond the scope of the differences committed to conference in violation of clause 3 of Rule XXVIII (relating to conference substitutes). 97–2, Aug. 11, 1982, pp 20481, 20482; 99–2, July 24, 1986, p 17599.
- Nongermane Senate amendments which would be subject to a separate vote under Rule XXVIII clause 4. 93–2, Oct. 9, 1974, p 34758–63; 94–2, Apr. 13, 1976, p 10811; 94–2, Aug. 10, 1976, p 26722.
- An appropriation in a Senate amendment. 7 Cannon § 1577; 92–2, July 27, 1972, pp 25822–24.
- An amendment which would otherwise be subject to a point of order that the language proposed is legislation on an appropriation bill. 88–1, Dec. 23, 1963, p 25495.

A resolution reported from the Committee on Rules may be drafted in such a way as to waive all points of order against a conference report *except* against certain provisions, *i.e.*, sections therein which contain matter beyond the House conferees' scope of authority in violation of Rule XXVIII clause 3. 93–2, Feb. 27, 1974, p 4397.

Resolutions waiving certain points of order against a conference report are subject to germane amendment if the previous question on the resolution is voted down. 93–2, Feb. 27, 1974, pp 4397, 4407, 4408.

By Unanimous Consent

By unanimous consent the House may waive some or all of the points of order that would otherwise lie against a conference report, and may take such action before the report has been filed or even before the conferees have reached agreement. 98–2, June 18, 1984, p 16841; 99–1, Dec. 16, 1985, p 26559. By unanimous consent, the House has waived points of order against:

- The three-day layover requirements of clause 2(a) of Rule XXVIII to permit the consideration of a report and amendments in disagreement. 98–1, Sept. 29, 1983, p 26497.
- The midnight filing of a new report on a bill recommitted to conference, and the consideration of the report on the following day. 97–2, Aug. 17, 1982, pp 21397, 21398.
- The consideration of a report (on a bill on which conferees had just been appointed) on that same day or any day thereafter (if filed). 99–1, Aug. 1, 1985, p 22640.

- The consideration of a report not yet filed and amendments reported in disagreement, subject to one-hour availability to Members. 97–2, Dec. 19, 1982, p 32401.
- The requirements of clause 3 (relating to scope of conference substitutes) and clause 4 (nongermane Senate amendments) of Rule XXVIII. 98–2, Mar. 27, 1984, p 6576.
- The consideration of a report containing no joint statement of the managers. 98–2, June 29, 1984, p 20206.

By Motion to Suspend the Rules

A conference report may be adopted pursuant to a motion to suspend the rules. 91–2, Dec. 31, 1970, pp 44282, 44291. Thus, the Speaker may recognize a Member to move to suspend the rules and agree to a conference report which has been ruled out of order because the conferees exceeded their authority in violation of Rule XXVIII clause 3. 93–2, Dec. 20, 1974, pp 41860, 41861.

C. Consideration and Disposition of Reports

§ 29. In General; Custody of Official Papers

Both Houses of Congress must agree to a conference report, and they do so seriatim. Either House must be in possession of the official papers before it can act. *Manual* § 549. 89–1, Oct. 20, 1965, pp 27698–708. Under a practice suggested by Jefferson (*Manual* § 555), at the close of an effective conference, the official papers change hands from the House asking the conference to the House agreeing to the conference. The managers on the part of the House agreeing to the conference take possession of the papers and submit them and the report to their House, which acts first on the report. 8 Cannon § 3330; 88–1, Dec. 19, 1963, p 25249. But the managers for the agreeing House may nevertheless surrender the papers to the asking House so that it may act first on the report. 8 Cannon § 3330. And the asking House will sometimes retain the official papers at the successful conclusion of the conference (instead of following the customary practice of surrendering them to the agreeing body) and act first on the report. 89–1, Oct. 20, 1965, pp 27698–708.

Where a conference breaks up without reaching any agreement, the managers for the House which (having the papers) asked the conference, are justified in retaining them and carrying them back to their House. 5 Hinds §§ 6254, 6571–6584; 8 Cannon § 3332. However, in the event that the matter in disagreement is an amendment of the House which requested the conference, the papers may be surrendered to the other House to permit it to

act first on, and respond to, that amendment. 94–1, Oct. 7, 1975, pp 31510, 32064.

§ 30. Layover and Availability Requirements

Generally

The floor consideration of conference reports is subject to the layover and availability requirements of the House rules. Rule XXVIII clause 2. *Manual* § 912a. They require that conference reports:

- Be printed in the Record on the day filed and be available for three calendar days (excluding Saturday, Sunday, and legal holidays unless the House is in session).
- Be available to Members on the floor for at least two hours before consideration thereof.

The three-day layover requirement does not apply during the last six days of a session. *Manual* § 912a. This is construed to mean that, during the last six calendar days, a conference report may be called up on the same day it is filed. 91–2, Dec. 29, 1970, pp 43804–08, 43813–15.

Rule XXVIII was amended in 1972 to clarify the manner of counting the three days for the layover period; it forbids consideration of conference reports, including reports in complete disagreement, until the third calendar day *following* printing in the Record. 92–2, Oct. 13, 1972, pp 36013–15, 36021–23.

Waivers

The three-day layover rule may be waived by unanimous consent (§ 31, infra), by suspension of the rules on suspension days (93–1, June 29, 1973, pp 22381 *et seq.*), or, more commonly, by adoption of a special rule or resolution from the Rules Committee. 92–2, Feb. 24, 1972, p 5495; 92–2, Aug. 18, 1972, p 29128. Such a resolution permits consideration of a report on the same day as filed, and sometimes permits a waiver of the three-day layover requirement for the entire remainder of a session. 92–1, Dec. 9, 1971, p 45873; 93–2, Dec. 18, 1974, pp 40846, 40847.

Even if the three-day layover requirement is waived, the conference report is still to be available at least two hours before the matter is taken up for consideration, though the two-hour requirement may likewise be waived pursuant to a report from the Committee on Rules. 94–2, Feb. 26, 1976, p 4625. The two-hour requirement may also be waived pursuant to a unanimous-consent agreement providing for consideration ''immediately'' after filing. 96–1, Sept. 28, 1979, p 26852.

§ 31. Calling Up Report; Reading

Generally; Precedence

A conference report may be called up in the House for floor consideration as privileged business after the report has been filed and is in compliance with the three-day layover and two-hour availability requirements of Rule XXVIII, discussed above (§ 30, supra). Unanimous consent is not required. 86–1, Sept. 2, 1959, p 17769.

Because of its potential value in settling House-Senate differences and as a parliamentary courtesy, a conference report is considered as a matter of high privilege (5 Hinds § 6443), its presentation taking precedence over:

- Unfinished business. 95–2, Oct. 4, 1978, p 33473.
- The reading of a bill. 5 Hinds § 6448.
- A Member occupying the floor in debate. 5 Hinds § 6451.
- The ordering of (or demand for) the previous question. 5 Hinds §§ 6449, 6450.
- The question of ordering a recorded vote. 5 Hinds § 6447.
- A motion to refer a Senate bill. 5 Hinds § 6457.
- A motion to reconsider. 5 Hinds § 5605.

But the consideration of a veto message from the President is a matter of higher privilege, and may interrupt consideration of a conference report and amendments in disagreement if the previous question has not been ordered. 95–2, Oct. 5, 1978, p 33704.

Who May Call Up

A conference report may be called up for consideration in the House by the senior manager on the part of the House at the conference, and he may be recognized to do so even though he did not sign the report and was in fact opposed to it. 90–1, Dec. 6, 1967, pp 35144–51. If the senior House manager is unable to be present on the floor to call up the report, the Speaker may recognize another member of the conference committee. 91–1, Dec. 23, 1969, pp 40982–84.

Reading

A conference report that meets the layover and availability requirements of Rule XXVIII need not be read when called up for consideration in the House. 96–1, Mar. 27, 1979, p 6301. If it has not been available for the three-day period, it must be read in full when called up for consideration (96–1, May 23, 1979, p 12469), unless dispensed with by unanimous consent (95–1, Aug. 3, 1977, p 26532) or by special rule. 95–1, Aug. 2, 1977, p 26103; 95–1, Aug. 4, 1977, p 27067. The statement of the managers ac-

companying a conference report may by unanimous consent be read in lieu of the report. 95–1, July 18, 1977, p 23460.

Withdrawal; Postponement

A conference report may be withdrawn from consideration in the House by the Member calling it up at any time before action thereon. 95–1, July 18, 1977, p 23460.

A motion to postpone the consideration of a conference report to a time certain is permitted until the question is put on the report; thereafter postponement is permitted only by unanimous consent. 93–2, Oct. 15, 1974, p 35640.

§ 32. En Bloc Consideration

Reports

Ordinarily, it is not permissible to consider several conference reports en bloc; each conference report should be considered and voted upon separately. 91–2, June 29, 1970, p 21833. However, pursuant to a resolution from the Committee on Rules, the House may consider and vote on two or more conference reports en bloc. 95–2, Oct. 14, 1978, p 38350.

Amendments in Disagreement

Where two or more amendments have emerged from conference in disagreement, they may by unanimous consent be considered en bloc where the same motion is to be applied to each amendment. 96–1, Nov. 29, 1979, p 34115. In one instance, for example, the House disposed of some 47 Senate amendments by a single motion to recede and concur. 95–2, Sept. 28, 1978, p 32449. Disposition of Senate amendments generally, see SENATE BILLS; AMENDMENTS BETWEEN THE HOUSES.

In a few instances, the Chair has entertained a unanimous-consent request for en bloc consideration even where the proposed motions to dispose of the amendments were not all the same, as where they proposed to recede and concur with different amendments changing section numbers in the report. 102–1, Nov. 6, 1991, p ____; 102–2, Sept. 25, 1992, p ____; 102–2, Oct. 1, 1992, p ____. Compare 96–1, Nov. 9, 1979, p 31797.

§ 33. Debate

Generally; Extending Time

Debate on a conference report is under the hour rule. (See Rule XIV clause 2; *Manual* § 758.) Such debate may be extended by unanimous consent but not by motion. 92–2, June 8, 1972, pp 20278–80; 98–2, June 27,

1984, p 19018. The one hour of debate could also be continued if the motion for the previous question were rejected and may also be extended by adoption of a special rule reported by the Committee on Rules. 93–2, Feb. 27, 1974, p 4397; 94–1, Mar. 26, 1975, p 8916.

Division of Time

The time for debate on a conference report or an amendment emerging from conference in disagreement is equally divided between the majority and minority parties, pursuant to Rule XXVIII clause 2. *Manual* § 912. The rule has been interpreted to require an equal allocation of time on a motion to dispose of an amendment in disagreement following rejection of a conference report by the House (94–1, Dec. 15, 1975, p 40714; 95–1, Sept. 16, 1977, p 29599) or following the sustaining of a point of order against a conference report (94–2, Sept. 27, 1976, p 32704; 94–2, Sept. 30, 1976, p 34085). Indeed, it has become the practice of the House to equally divide the time on all motions to dispose of amendments emerging from conference in disagreement, whether the amendment has been reported in disagreement or has come before the House at some other stage for disposition. See *Manual* § 912. See also 99–2, Oct. 15, 1986, p 31506.

Three-way Division of Debate

Rule XXVIII clause 2 was amended in the 99th Congress to provide that if both the floor manager for the majority and the floor manager for the minority support a conference report the hour of debate thereon may be divided three ways—among the two managers and a Member who is opposed. *Manual* § 912a. 99–1, Aug. 1, 1985, p 22640. This allocation may not be claimed if the minority manager states that he or she is opposed to the report. 99–2, Oct. 15, 1986, p 31515. Recognition of a Member to control the 20 minutes of debate in opposition does not depend upon party affiliation. 99–1, Dec. 11, 1985, p 36069; 99–1, Dec. 16, 1985, p 36717. Priority in such recognition is accorded to a member of the conference committee. 100–1, Dec. 21, 1987, p 37516.

To open debate, the Chair recognizes first the majority manager, then the minority manager, then the Member in opposition. The right to close the debate where the time is divided three ways falls to the manager offering the motion. 101–1, Nov. 21, 1989, p 30814. A similar three-way division of time applies to the motion offered by the floor manager to dispose of an amendment remaining in disagreement if the floor managers for the majority and minority favor the motion. *Manual* § 912b.

§ 34. — Recognition; Control of Debate Time

Generally

When a conference report is called up and a Senate amendment in disagreement is pending, the hour of debate time is equally controlled by the majority and minority parties. 95–1, Oct. 12, 1977, p 33445; 95–1, Sept. 15, 1977, p 29425. Where the Member calling up the report does not seek recognition as a majority member to offer a motion to dispose of the matter reported in disagreement, another majority member may be recognized to offer such a motion and to control one-half of the time thereon. 95–1, Nov. 3, 1977, pp 36959, 36966. And where conferees have been appointed from two committees of the House, the Speaker may recognize the chairman of one committee to control 30 minutes and a minority member of another committee to control 30 minutes. 92–2, Jan. 19, 1972, pp 319–324. By unanimous consent, the time allocated to the majority and minority may be reallocated to other Members, with the right of those Members to yield time to other Members. 99–2, Oct. 8, 1986, p 29714.

Debate in the House on a Senate amendment reported from conference in disagreement having been divided, the minority member in charge controls 30 minutes for debate only and can yield to other Members only for debate. 94–1, Dec. 4, 1975, p 38717; 95–1, Aug. 2, 1977, p 26209. Another minority member, merely by offering a preferential motion, does not thereby control one-half of the time under the original motion. 98–2, Oct. 10, 1984, p 31694.

But if the original motion is defeated, a second motion to dispose of the amendment may be offered; and if the second motion is offered by a minority member, the Chair may allocate the hour of debate between him and a majority member, although neither controlled time on the initial motion. 96–2, July 2, 1980, pp 18357–60.

Debate Following Division of the Question

Where a preferential motion to recede and concur in an amendment reported from conference in disagreement has been divided, one hour of debate, equally divided between the majority and minority, is permitted on the motion to recede; and if the previous question is ordered only on the motion to recede and if the House then recedes and a preferential motion to concur with an amendment is offered, another hour of debate equally divided is permitted. 95–1, Aug. 2, 1977, p 26206; 95–2, Oct. 5, 1978, p 33698. The Chair may put the question on receding without debate if the majority and minority floor managers do not seek recognition to debate that portion of the original motion, since the subsequent question of concurring, or concur-

ring with an amendment, is debatable for one hour, equally divided between the managers. 98–2, Oct. 10, 1984, p 31694.

§ 35. Recommittal of Report

Generally; By Motion

A motion to recommit a conference report is in order if the other House has not acted on the report and thereby discharged its managers. See Rule XVII clause 1. 88–1, Dec. 19, 1963, p 25249; 90–2, June 5, 1968, p 16058. After one House has acted on a report, thus discharging its managers, the other House has only the option of accepting or rejecting it. 89–1, Oct. 20, 1965, pp 27698–708. After both Houses have acted on the report, it can be recommitted to conference only by concurrent resolution. 8 Cannon § 3316.

The motion to recommit is said to be the prerogative of the minority. See REFER AND RECOMMIT. But the Speaker has recognized a majority member to offer a motion to recommit a conference report in the absence of a minority member seeking recognition to offer the motion. 91–2, July 23, 1970, p 25616.

A motion to recommit a conference report is not in order until the previous question has been ordered on the report. 91–2, Dec. 15, 1970, p 41502. Thereafter, a motion to recommit the report is in order. 87–1, Sept. 21, 1961, p 20533; 88–1, Dec. 21, 1963, p 25409. Only one valid motion is permitted, so if the motion is voted down, the question before the House is on the adoption of the report. 87–2, Sept. 20, 1962, pp 20094, 20105. However, if a recommittal motion with instructions is ruled out on a point of order, a valid motion can still be offered. A motion to recommit comes too late after the report has been agreed to. 90–2, May 22, 1968, pp 14402–05.

Where a conference report is recommitted to conference, the House managers carry the original papers back to conference. 92–1, Dec. 1, 1971, p 43835. The same conferees remain appointed. 97–2, Aug. 17, 1982, pp 21397, 21398. If a second report is then filed by the conferees, it is numbered and otherwise treated as a new and separate report. 87–2, June 29, 1962, pp 12135, 12297, 12355.

Instructions in motion to recommit, see § 15, supra.

Recommittal by Unanimous Consent

Conference reports are sometimes recommitted by unanimous consent. 89–1, June 30, 1965, p 15212; 90–1, June 28, 1967, p 17738; 93–2, July 9, 1974, p 22319. This procedure may be used:

- To recommit a report in which an error has been discovered. 89–1, June 30, 1965, p 15212.
- To permit the conferees to make certain changes and to file a new report. 93–1, Nov. 7, 1973, p 36222.
- Where the conferees have exceeded their authority in reporting a matter not in disagreement. 90–1, June 28, 1967, p 17738.

§ 36. Final Disposition of Report; Voting

Generally

As a general rule, when a conference report has been debated and its final disposition is pending only three courses of action to dispose of the report are available to the Members: (1) agree, (2) disagree, or (3) recommit to conference. See 5 Hinds §§ 6546, 6558. (Recommittal, see § 35, supra.) Conference reports may not be:

- Disposed of by the motion to table. 5 Hinds §§ 6538–6544.
- Referred to a standing committee. 5 Hinds § 6558.
- Amended (5 Hinds §§ 6534, 6535), except by concurrent resolution (5 Hinds § 6536).
- Sent to Committee of the Whole. 5 Hinds §§ 6559–6561.

A report having been presented, the motion to agree to the report is regarded as pending. The Speaker may put the question on the report without motion from the floor. 5 Hinds § 6517; 8 Cannon § 3300. While most reports are agreed to by majority vote, a two-thirds vote is required on a report relating to a constitutional amendment (5 Hinds § 7036) and under Rule XXI clause 5(c), a three-fifths vote is required on a conference report carrying a federal income tax vote increase. Speaker's discretion to postpone a vote on a conference report, see Rule I clause 5(b). *Manual* § 631. Postponement by unanimous consent, see § 31, supra.

Partial Reports

A conference report must generally be acted on as a whole, and either agreed to or disagreed to in its entirety. Rejection of a portion of a conference report under a House rule permitting such a separate vote results in the rejection of the entire report. 92–1, Nov. 10, 1971, pp 40479, 40481. And until the report has been acted on no motion to deal with individual amendments is in order. 5 Hinds §§ 6323, 6389, 6390. In some cases, how-

ever, the managers return to the House with a partial conference report dealing with the amendments on which they have reached agreement, but specifying one or more amendments that remain in disagreement. 5 Hinds §§ 5460–5464. In such cases, the vote first occurs on agreeing to the conference report on those matters on which agreement has been reached; the amendments reported therein in disagreement are reported and acted on seriatim thereafter. 88–1, Dec. 24, 1963, p 25532. Amendments reported in total disagreement, see § 39, infra.

Motions to Reconsider the Vote

After disposition of the report and amendments reported from conference in disagreement, it is in order to move to reconsider the vote on a motion disposing of one of the amendments. 97–1, Nov. 22, 1981, p 28754; 98–1, Oct. 5, 1983, p 27323. But the Speaker may put from the Chair as one question reconsideration of all those votes (subject to demand for a separate vote on reconsideration of any question) and a Member may then move to lay all motions to reconsider on the table. 95–2, Oct. 4, 1978, p 33480.

§ 37. Effect of Rejection of Report; Further Conferences

When either House disagrees to a conference report the matter is left in the position it was in before the conference was asked. 5 Hinds § 6525. Motions for the disposition of amendments in disagreement or to send the matter to further conference are again in order. 8 Cannon § 3303. See also 87–1, Sept. 13, 1961, pp 19219–21. Thus, the House may reject a conference report, insist on disagreement to a Senate amendment, and ask for a further conference. 87–1, Sept. 26, 1961, pp 21427–40; 88–2, Aug. 18, 1964, pp 20121, 20127; 95–2, Feb. 28, 1978, p 5018. However, a motion to instruct House managers at a new conference is not in order until the motion to go to further conference has been agreed to. 94–1, May 1, 1975, p 12761.

D. Disposition Where Conferees Report in Total Disagreement

§ 38. In General

Where the managers at a conference are unable to come to any agreement on the matters committed to them, they must prepare a written report to that effect and must sign the report. Compare 5 Hinds §§ 6565–6570. The report must be filed and ordered printed. *Manual* § 545. Under the former

practice, amendments reported in total disagreement could be taken up for immediate consideration in the House. 8 Cannon §§ 3299, 3332. Today the matter in disagreement is subject to the three-day layover requirement of Rule XXVIII clause 2(b). 97–1, Nov. 12, 1981, p 27226.

House action on amendments reported in total disagreement differs from that of the Senate. In the Senate, a conference report in total disagreement is considered before disposition of the reported amendments. 96–1, May 23, 1979, p 12399. In the House, after the report is called up, action is taken on the amendment in disagreement but not on the report. 99–1, Nov. 1, 1985, pp 30126–68. Thus, where conferees report in disagreement, and the Senate then recedes and concurs in the House amendments with an amendment, the conference report is not acted on in the House; the Speaker merely directs the Clerk to report the Senate amendment to the House amendments for disposition by motion. 90–1, Sept. 19, 1967, p 26040; 95–2, May 17, 1978, p 14116. Debate (including possible three-way debate) and voting proceeds in the same manner as on amendments reported from conference in partial disagreement. See §§ 33 *et seq.*, supra. Motions to dispose of amendments in disagreement, see SENATE BILLS; AMENDMENTS BETWEEN THE HOUSES.

Congressional Disapproval Actions

Research References
U.S. Const. art. I § 7
Manual §§ 1013–1013(26)

§ 1. In General

Congress has enacted numerous laws reserving to itself a right of review by approval or disapproval of certain actions of the executive branch or of independent agencies. These laws, known as ''Congressional disapproval'' statutes, take various forms. For example, the Alaska Natural Gas Transportation Act permits the privileged consideration of joint resolutions approving Presidential decisions on the Alaska natural gas transportation system, when those resolutions are reported from committee or are discharged after 30 days. 15 USC §§ 719(f), 719(g). *Manual* § 1013(20). See 95–1, Nov. 1, 1977, p 36347. Another statute sets forth a similar procedure for congressional approval or disapproval of certain actions by the District of Columbia Council. District of Columbia Home Rule Act, §§ 602(c), 604. *Manual* § 1013(5).

§ 2. Constitutionality

Recent Federal court decisions indicate that congressional action to approve or disapprove an executive branch determination should be undertaken by way of a bill or joint resolution and not by way of a simple or concurrent resolution or through committee action. In 1983, the U.S. Supreme Court declared in *Immigration and Naturalization Service* v *Chadha* that a statute permitting the disapproval of a decision of the attorney general by simple resolution of one House only was unconstitutional. The Court said the device violated the doctrine of separation of powers, the principle of bicameralism, and the clause of the Constitution requiring that legislation passed by both Chambers must be presented to the President for his signature or veto. See 462 US 919. In an earlier decision, the U.S. Court of Appeals had specifically held a one-house legislative veto provision in the Natural Gas Policy Act of 1978 (15 USC § 3341(b)) to be unconstitutional. In its decision the circuit court (for the District of Columbia) said that the pri-

mary basis for its holding was that the one-house veto violates constitutional Article I section 7, both by preventing the President from exercising his veto power and by permitting legislative action by only one House of Congress. The circuit court also found the one-house veto to contravene the separation of powers principle implicit in Articles I, II, and III because it authorizes the legislature to share powers properly exercised by the other two branches of government. The court declared that Article I section 7 sets forth the fundamental prerequisites to the enactment of federal laws—bicameral passage of legislation and presentation for approval or disapproval by the President, and held that congressional disapproval of final agency rules must comply with these requirements. The court added that Congress may choose to use a resolution of disapproval as a means of expediting action, but only if it acts by both Houses and presents the resolution to the President. *Consumer Energy Council of America, et al.* v *FERC*, 673 F2d 425 (D.C. Cir. 1982), Affd, 103 S. Ct. 3556.

In the light of these decisions, Congress has amended several statutes to convert procedures involving simple or concurrent resolutions of approval or disapproval to procedures requiring joint resolutions to be presented to the President for his signature or returned for a possible veto override, consistent with the ''presentment'' clause of Article I section 7. *Manual* § 1013.

§ 3. Consideration in the House

Many ''Congressional disapproval'' statutes prescribe special procedures for the House to follow when reviewing executive branch actions. *Manual* §§ 1013(1)–1013(32). For a list of statutes having such procedures, see *Manual* § 1013. These procedures technically are rules of the House, enacted expressly or impliedly as an exercise of the House's rule-making authority. At the beginning of each Congress, it is customary for the House to reincorporate by reference in the resolution adopting its rules such ''Congressional disapproval'' procedures as may exist in current law. Nevertheless, because the House retains the constitutional right to change its rules at any time, the Committee on Rules may report a resolution varying such procedures. *Manual* § 1013.

Where a law enacted as a rule of both Houses provides special procedures during consideration of a joint resolution approving a Presidential determination, and the House then adopts a special order providing for consideration of such a joint resolution in the House, the Speaker will nevertheless interpret the special statutory provisions to apply if consistent with the special order. 97–1, Dec. 10, 1981, p 30486.

Congressional Record

Research References
5 Hinds §§ 6958–7024
8 Cannon §§ 3459–3502
1 Deschler Ch 5 §§ 15–20
Manual §§ 923–929

§ 1. In General; Control Over the Record

The present system of reporting the proceedings of the House for the *Congressional Record* is the result of gradual evolution. The first debates, beginning in 1789, were published in condensed form in the *Annals of Congress*. The *Congressional Globe* began in 1833 and continued until 1873, when the *Congressional Record* began. 5 Hinds § 6959.

The Record is governed by statutory provisions and rules as to its format and content. 44 USC §§ 901–910. Control over the arrangement and style of the Record, including maps, diagrams, and illustrations (44 USC § 904), is vested in the Joint Committee on Printing (44 USC § 901). Neither the Speaker nor the House may order changes in the type size or printing style without the approval of the Joint Committee on Printing. Deschler Ch 5 §§ 15.1, 15.2.

The proceedings of the House and the proceedings of the Senate are published in separate portions of the Record, and each House separately controls the content of its portion of the Record. 8 Cannon § 2503. The statement of a Senator that would normally appear in the Senate portion of the Record may not be inserted in that portion of the Record dealing with the proceedings of the House. 87–2, Jan. 16, 1962, p 291.

Both the Joint Committee on Printing and the House have adopted supplemental rules governing publication in the Record. *Manual* § 924. The Committee on House Oversight has jurisdiction of matters relating to printing and correction of the Record. Rule X(h)(8).

A Member is not entitled to inspect the reporter's notes of remarks of others not reflecting on himself (5 Hinds § 6964), nor may he demand that they be read (5 Hinds § 6967; 8 Cannon § 3460).

§ 2. Matters Printed in the Record

Generally

The content of the House portion of the Record is governed by statutory law, the House rules, and the customs and practices of the House. In addition, the House often agrees by unanimous consent to permit certain matter to be inserted in the Record which would not ordinarily be included. Deschler Ch 5 § 16.

The *Congressional Record* is required by House rule to be a ''substantially verbatim account'' of the proceedings of the House. *Manual* § 764a. Because of this requirement, the Speaker will not entertain a unanimous-consent request to give a special-order speech ''off the Record.'' 102–2, June 24, 1992, p ____.

Additional matters required by statute or House rules to be printed in the Record include:

- The oath of office subscribed to by a Member. 2 USC § 25.
- Referrals to committee under Rule XXII. *Manual* § 854.
- The filing of committee reports. *Manual* § 743.
- Reports submitted to Congress pursuant to a statute requiring publication in the Record. 87–1, Mar. 24, 1961, pp 4816–18; 87–2, Mar. 15, 1962, p 4324.
- Amendments to be protected for debate time under the five-minute rule. *Manual* § 874.
- Conference reports and accompanying statements. *Manual* § 912.
- Messages received from the Senate and President giving notice of bills passed or approved. *Manual* § 935.
- Statements and rulings of the Chair. 104–1, Jan. 20, 1995, p ____.
- Motions to discharge. *Manual* § 908.
- Voting pairs. *Manual* § 660.
- Timely changes in votes. Deschler Ch 5 § 16.14.

The Record is for the proceedings of the House and Senate only, and unrelated matters are rigidly excluded. 5 Hinds § 6962. It is not, however, the official record, that function being fulfilled by the Journal. See JOURNAL.

As a general principle the Speaker has no control over the Record (5 Hinds §§ 6983, 7017); the House, and not the Speaker, determines the extent to which a Member may be allowed to extend his remarks (5 Hinds §§ 6997–7000; 8 Cannon § 3475), whether or not a copyrighted article shall be printed therein (5 Hinds § 6985), or whether there has been an abuse of the leave to print (5 Hinds § 7012; 8 Cannon § 3474).

The House frequently agrees by unanimous consent to permit insertions of matters of general interest in the Record at the request of Members. Matter which may be inserted in the Record under this procedure include:

- Information relative to the installation of voting equipment in the Chamber. 91–2, Nov. 25, 1970, p 39085.
- Records from litigation involving the House. 90–1, Apr. 10, 1967, pp 8729–62.
- The transcript of proceedings of the House in a secret session. 96–1, July 17, 1979, p 19049.
- Summaries of the work of Congress or its committees at adjournment. 92–2, Oct. 18, 1972, p 37063; 94–1, Dec. 19, 1975, p 41975; 92–1, Dec. 17, 1971, p 47677; 93–2, Dec. 20, 1974, p 41860.

Dispensing With Printing Requirements

The House, in the interests of economy (92–2, May 16, 1972, p 17394), occasionally agrees by unanimous consent to dispense with the printing in the Record of an especially lengthy bill (88–1, June 17, 1963, p 10910; 88–1, Sept. 25, 1963, p 18044; 95–1, Aug. 5, 1977, p 27218), and may instead provide for an explanatory statement in lieu thereof. 87–2, Apr. 2, 1962, p 5531. In such cases, the House will weigh the cost of publishing the bill in the Record against the importance of the bill and the value of its quick dissemination. See 95–1, Aug. 5, 1977, p 27218.

§ 3. Corrections; Deletions

Under an amendment to Rule XIV clause 9 adopted in 1995, the *Congressional Record* account of remarks made during debate is subject to technical, grammatical, and typographical corrections authorized by the Member making the remarks involved. Unparliamentary remarks may be deleted only by permission or order of the House. *Manual* § 764a.

The remarks of a Member, if in order, cannot be stricken from the Record by the House. 5 Hinds § 6974; 8 Cannon § 3498. But remarks that are out of order may be excluded from the Record by House order. See Deschler Ch 5 § 19.8.

Remarks by an interrupting Member who has not been recognized do not appear in the Record. *Manual* § 750.

The Committee of the Whole has no control over deletions from the Record. 5 Hinds § 6986; Deschler Ch 5 § 17.22.

§ 4. Printing Errors

Generally

The House may correct errors in the printing of the Record in order to ensure that the proceedings of the House are accurately recorded. 5 Hinds § 6972. The authority to correct such errors is vested in the House, not the Speaker. 5 Hinds § 7019; Deschler Ch 5 § 18.

The correction of an error in the Record may present a question of the privileges of the House. Deschler Ch 5 §§ 18.1, 18.2; *Manual* § 927. However, this question may not be raised until the daily edition of the Record has appeared (Deschler Ch 5 § 18), and no corrections may be submitted after the permanent edition of the particular volume is published. 91–1, Jan. 23, 1969, p 430.

Errors that may be corrected under this procedure are errors in the transcript or printing of the proceedings, not errors of fact made by a Member during debate. The House may not change the Record merely to show what should have been said on the floor. 5 Hinds § 6974; 8 Cannon § 3498; Deschler Ch 5 § 18.

By Motion or Resolution

A motion or resolution to correct the Record is in order (Deschler Ch 5 § 18) after the approval of the Journal (Deschler Ch 5 § 18.6). A motion or resolution to correct the Record is also in order after objection to a unanimous-consent request to that effect has been objected to (Deschler Ch 5 § 18.9). It is debatable under the hour rule (Deschler Ch 5 §§ 18.7, 18.10), and is subject to a motion to refer to the Committee on Rules (Deschler Ch 5 § 18.8).

§ 5. Extensions of Remarks; Insertions

Generally

In 1968, the Appendix of the Record was replaced by a new heading, ''Extensions of Remarks,'' for the inclusion of material in the Record which is extraneous to the proceedings on the floor. 90–2, Jan. 5, 1968, p 56. See also 104–1, Jan. 4, 1995, p ____. A Member may be permitted to extend his remarks in this part of the Record so as to insert (1) a speech that was not actually delivered on the floor and (2) extraneous materials related to the subject under discussion, provided the consent of the House is obtained. 5 Hinds §§ 6990–6993; Deschler Ch 5 § 20. This has been a practice of long-standing, dating from as early as 1852, when it was the custom to print undelivered speeches in the Appendix to the Record. 5 Hinds § 6993. Under

the modern practice, such insertions are permitted by unanimous consent and not by privileged motion. 94–2, June 29, 1976, p 21146.

Permission to include extraneous materials may be granted only by the House. The Chairman of the Committee of the Whole may recognize a Member to extend his own remarks (see Deschler Ch 5 § 20.12), but the Committee of the Whole lacks the power to permit the inclusion of extraneous materials (91–1, Sept. 4, 1969, p 24372.

Permission to extend must be sought by the Member whose remarks are to be inserted (Deschler Ch 5 § 20), although general permission to extend is sometimes given to some or all Members. 97–2, Aug. 10, 1982, p 20266; 98–1, Nov. 15, 1983, p 32668.

The substantially verbatim account must be clearly distinguishable, by different typeface, from material inserted under permission to extend remarks; the Speaker has instructed the Official Reporters of Debates to adhere strictly to this requirement. 100–2, Mar. 2, 1988, p 2963; 103–1, Feb. 3, 1993, p ____.

Objecting to Extensions

Any Member may object to a unanimous-consent request to extend remarks or include extraneous material. And a Member may object to unanimous-consent requests en bloc (made at the end of the day by the Majority or Minority Leader) or only to certain of those requests. 94–2, June 29, 1976, p 21165.

Timeliness

Permission to extend must be sought at the proper time. Requests to insert made prior to the reading and approval of the Journal will not be entertained. 87–2, Sept. 19, 1962, p 19940. The Speaker may decline to entertain a request to extend remarks pending a motion to discharge a committee (Deschler Ch 5 § 20.7) or during the pendency of a motion to suspend the rules (Deschler Ch 5 § 20.8).

Strict Construction

Authorizations to extend remarks in the Record are strictly construed. (Deschler Ch 5 § 20.) A Member who has received permission to extend his remarks may not without consent include in such remarks extraneous matter, such as an article or speech by another person. 8 Cannon § 3479; Deschler Ch 5 § 20.23. Similarly, a Member who has obtained the consent of the House to extend remarks only on a specific bill must confine his insertions to the subject matter of the bill and may not include extraneous materials such as letters, editorials, or articles. (Deschler Ch 5 § 20.24.)

The Chair may decline to entertain a request that a Member be permitted to revise and extend his remarks on a point of order (98–1, Nov. 2, 1983, p 30545) or to insert, immediately following a roll call vote on an amendment, a previous record vote on the same subject (96–2, Jan. 30, 1980, p 1319).

Limitations on Insertions

Under leave to extend a Member may not insert matter which:

- Would be out of order if stated on the House floor. 5 Hinds § 7003; 8 Cannon § 3472; 102–2, Oct. 2, 1992, p ____.
- Is unparliamentary. 8 Cannon § 2513; Deschler Ch 5 §§ 20.19, *et seq.*
- Fails to comply with statute or the rules of the Joint Committee on Printing as to format (44 USC § 904), cost-estimate requirements (87–2, Feb. 12, 1962, p 2207; 87–2, Oct. 9, 1962, p 22850), and subject matter (92–2, May 10, 1972, pp 16661, 16748–16836). See also 8 Cannon § 3501.
- Fails to conform to the descriptions implicit in the request to which the House consented. 5 Hinds § 7001; 8 Cannon § 3479; Deschler Ch 5 §§ 20.25, 20.26.
- Fails to include the Member's signature (93–2, Aug. 15, 1974, p 28385).
- Alters the nature of coloquies as recorded on the floor (96–1, May 7, 1979, p 10099) or changes the meaning of what another Member said (Deschler Ch 5 § 20.3).
- Includes newspaper articles or other extraneous matter without having obtained authority to do so. 8 Cannon §§ 3480–3483.

Abuse of Leave to Print

Abuse of the leave to print gives rise to a question of privilege. 5 Hinds §§ 7008, 7011; 8 Cannon §§ 3491, 3495. A resolution to investigate the propriety of remarks as constituting such abuse (8 Cannon § 3495), or for the appointment of a committee to consider the propriety of remarks inserted under leave to print (8 Cannon § 3493) is privileged (5 Hinds § 7012), but is not in order until the Record appears (5 Hinds §§ 7020, 7021). An inquiry by the House as to alleged abuse of leave to print does not necessarily entitle the Member implicated to the floor on a question of personal privilege (5 Hinds § 7012); but when a committee is appointed to investigate the propriety of a Member's remarks in the Record, the Member is afforded an opportunity to be heard (8 Cannon § 3491).

Expungement

The extension of remarks in the Record by a Member without the permission of the House constitutes grounds for a question of the privilege of the House, and the House may expunge such remarks from the Record. Deschler Ch 5 § 20.2. A resolution to expunge a speech alleged to be an

abuse of leave to print is privileged (8 Cannon §§ 3475, 3491), and entitles its proponent to recognition to debate it (8 Cannon § 3479).

Forms

MEMBER: Mr. Speaker, I ask unanimous consent to revise and extend my remarks in the Record.

OPPONENT: Reserving the right to object, on what subject does the gentleman propose to extend remarks?

MEMBER: Mr. Speaker, I ask unanimous consent to extend my remarks on the bill just passed, H.R. _____, by inserting an article pertaining thereto.

MAJORITY LEADER: Mr. Speaker, I ask unanimous consent that all Members speaking on the bill have five legislative days in which to extend remarks in the Record, to be confined to the bill.

Consideration and Debate

A. Introductory; Initiating Consideration and Debate

B. Control and Distribution of Time for Debate

C. Relevancy in Debate

D. Disorder in Debate

Research References
5 Hinds §§ 4978–5299
8 Cannon §§ 2448–2608
Manual §§ 359, 364, 369–372, 465, 622, 749, 753–758, 762, 804, 805, 870–874, 907, 922
Deschler-Brown Ch 29

A. Introductory; Initiating Consideration and Debate

§ 1. In General; In the House

Generally; Initiating Consideration

Whether and how a matter is to be considered depends on many factors—the way it is brought to the floor, on the nature and precedence of the proposal, and on agreements reached by the leadership and membership on the method of consideration. And the House may reject a proposal to consider a matter by voting solely on the question of consideration. See QUESTION OF CONSIDERATION.

Measures may be called up for consideration pursuant to special rules reported from the Committee on Rules, by motions to suspend the rules, and by unanimous-consent agreements. Certain measures may be called up for consideration in the House as privileged if reported by the appropriate committee (*Manual* §§ 726–728), but where not so reported, such a measure must be called up by some other procedure, such as suspension of the rules or a special rule making the matter privileged. 95–1, Feb. 17, 1977, pp 4579–81; 87–2, Sept. 27, 1962, p 21048. See also 95–2, May 18, 1978, p 14377.

A measure cannot be considered if there is no mechanism under rules of the House that permits such consideration. Except by unanimous consent,

the Speaker has no authority to permit consideration in the House of a matter which is not in order under the rules. 95–1, Feb. 16, 1977, p 4053. House consideration of commemoration bills and certain private bills (Rule XXII clause 2) and measures carrying a retroactive federal income tax rate increase (Rule XXI clause 5) is expressly prohibited.

Generally, questions are not considered on the floor unless reported or discharged from House committees, although the House rules permit the immediate consideration of introduced bills under certain circumstances. §§ 3, 4, infra. Certain time periods or ''layover'' requirements may be a condition precedent to consideration in the House after the committee has reported the matter in question. See COMMITTEES. And even though a committee may have reported a bill favorably, a Member cannot rise and debate it until the Chair has recognized him to do so. See RECOGNITION.

Other factors bearing on consideration include whether the proposal has been referred to the House or Union Calendar, or whether the proposal is called up from a particular special calendar such as the Corrections Calendar (see § 5, infra).

Initiating Debate

As a general rule debate is not in order until a motion has been made (5 Hinds §§ 4984, 4985) and stated by the Chair or read by the Clerk (5 Hinds §§ 4982, 4983, 5304). One mechanism for initiating debate on a matter is for a Member to make a motion that is debatable under a specific rule of the House. (See, for example, Rule XXVII clause 3, authorizing forty minutes of debate on a motion to suspend the rules and pass a bill.)

However, debate may be initiated without motion:

- When requests to consider a proposition have been granted. 4 Hinds § 3058.
- When questions of personal privilege are raised. 3 Hinds § 2546.
- When conference reports are considered (5 Hinds § 6517), the question on agreeing being regarded as pending (*Manual* § 550).
- When the Committee of the Whole reports its recommendation to the House. 4 Hinds § 4896.
- When personal explanations are made by unanimous consent. 5 Hinds § 5064.

It should also be noted that debate on a matter may be initiated without motion if such debate is authorized or directed by special rule or if the matter is business being considered from a special calendar that is before the House.

§ 2. Order of Consideration

A general rule for the ''daily order of business'' is set forth in Rule XXIV, which specifies the sequence in which certain matters are to be taken up. *Manual* § 878. The order of consideration may be varied by unanimous-consent agreements (§ 6, infra), and by special orders reported from the Committee on Rules and adopted by the House. Generally, see ORDER OF BUSINESS. See also SPECIAL RULES.

Among the privileged matters which may affect the order of consideration are: (1) general appropriation bills (Rule XVI clause 9), (2) conference reports (Rule XXVIII clause 1(a)) and (3) special orders reported by the Committee on Rules (Rule XI clause 4(b)). *Manual* § 880. Generally, see QUESTIONS OF PRIVILEGE.

Some propositions are privileged for consideration on certain days of the week or month. On any Monday or Tuesday, for example, the Speaker may recognize Members to move to suspend the rules and pass bills. *Manual* § 902. See also § 5, infra.

§ 3. Use of Special Rules

A major portion of the legislation taken up in the House is considered pursuant to resolutions, also called ''special rules'' or ''special orders,'' reported by the Committee on Rules and adopted by the House. While the general effect of the adoption of a resolution making in order the consideration of a bill is to give to the bill a privileged status (Deschler Ch 21 § 16), the adoption of the resolution making in order the consideration of a bill does not make the consideration mandatory unless so stated in the resolution. The resolution may provide that ''the House shall immediately consider'' the bill; it may permit the Speaker to declare the House resolved into Committee of the Whole for the consideration of the bill (see Rule XXIII clause 1(b); it may provide for consideration at some specified time in the order of business. See § 12, infra. If the special rule places control over the calling up of the bill in a Member, the consideration of the bill must await the initiative of that Member. See Deschler Ch 21 §§ 20.16, 20.17.

Special rules may provide for the consideration of a bill or resolution in the Committee of the Whole, in the House, or in the House *as in* the Committee of the Whole. See Deschler Ch 21 §§ 20.16, 20.17.

The measure whose consideration is made in order by a special rule may consist of a House or Senate bill or resolution. Deschler Ch 21 §§ 20.5–20.15. A special rule may be limited in scope, as where it applies merely to a specified amendment to a pending bill. 8 Cannon § 2258.

The resolution may waive one or more House rules which impede the consideration of the bill or amendment thereto; and points of order do not lie against the consideration of such a resolution, as it is for the House to determine, by a majority vote on the adoption of the resolution, whether certain rules should be waived. Deschler Ch 21 §§ 16.9–16.14. Generally, see SPECIAL RULES.

§ 4. Consideration Under Suspension of the Rules

A motion to suspend the rules may be used to bring a matter before the House and pass it under Rule XXVII clause 1. 5 Hinds §§ 6846, 6847. Additionally, the motion to suspend may provide for a series of procedural steps, including the reconsideration of a bill already passed, agreement to an amendment, and repassage as amended. 5 Hinds § 6849. The motion may provide for the passage of a bill even if the bill has not been reported or referred to any calendar or even previously introduced. 8 Cannon § 3421. The motion may be used for example:

- To pass a measure submitted from the floor and not considered by a committee. Deschler Ch 21 § 9.19.
- To pass a bill which is pending before a committee but which has not been reported. Deschler Ch 21 § 9.
- To pass a Senate bill similar to a House bill. Deschler Ch 21 § 9.3.
- To take a bill from the Speaker's table and agree to Senate amendments (8 Cannon § 3425) or amend Senate amendments (93–1, Dec. 20, 1973, p 42883).
- To pass a Senate measure as amended, insist on the House amendment and request a conference. See 103–2, Mar. 24, 1994, p ____.
- To waive a rule of the House. 5 Hinds § 6862.

The motion to suspend the rules as authorized by House Rule XXVII clause 1 is privileged (*Manual* § 902), but is in order only on the days specified by the rule or when the House by unanimous consent or rule gives the Speaker authority to recognize for such motions on other days of the week. In any case, recognition to make the motion is within the discretion of the Speaker. The motion is debatable for 40 minutes, is not amendable, and requires a two-thirds vote for adoption. See SUSPENSION OF RULES.

§ 5. Role of Calendars

Generally

The House maintains various calendars to facilitate the consideration of different classes of legislative business. The primary calendars are (1) the Union Calendar, for business to be taken up in the Committee of the Whole,

(2) the House Calendar, for matters to be considered in the House, (3) the Private Calendar, to which all reported private bills are referred, and (4) the Corrections Calendar. Most legislative business reported from committee is referred to one of these calendars. *Manual* § 742. In addition the House maintains a Discharge Calendar for motions to discharge a committee (*Manual* § 908).

The Corrections Calendar

The transaction of business by a call of the Corrections Calendar is authorized by Rule XIII clause 4. This rule, adopted in the 104th Congress, establishes a procedure under which certain bills and resolutions may be considered on the second and fourth Tuesdays of each month. The rule permits the Speaker, after consultation with the Minority Leader, to file a notice with the Clerk requesting that a bill be placed on the calendar, where the bill has been reported and is on either the House or Union Calendar. *Manual* § 745a.

Measures on the Corrections Calendar are called in numerical order, following the Pledge of Allegiance in the order of business, after they have been on the calendar for three legislative days and require a three-fifths vote for passage. *Manual* § 746. See also CALENDARS.

§ 6. Consideration by Unanimous Consent

The House, pursuant to a unanimous-consent agreement, sometimes permits the consideration of a bill that is not otherwise in order under the rules, for example, one not yet introduced. 97–1, July 17, 1981, p 16315; 97–2, June 23, 1982, p 14989. A request for unanimous consent to consider a bill is in effect a request to suspend the order of business temporarily. Any Member may object or demand the ''regular order.'' 4 Hinds § 3058. The Speaker may in his discretion decline to recognize a Member who rises to seek the consent of the House to such an agreement. 97–1, July 17, 1981, p 16315.

The Speaker may decline recognition where the Member making the request has failed to comply with the Speaker's policy that he and the party leaders be notified in advance of the intention to submit unanimous-consent requests for changes in the order of business. 6 Cannon § 708; Deschler Ch 23 § 44.1. In recent years, the Speaker has consistently declined to recognize Members to seek consideration of bills by unanimous consent unless assured that the majority and minority elected floor leaderships and subcommittee and ranking minority members have no objection. See Manual §§ 757, 881, for discussion of various situations in which the Speaker has declined recognition for unanimous-consent consideration of a measure. The Speaker's

authority to decline to recognize individual Members to request unanimous consent for the consideration of bills derives from clause 2 of Rule XIV, which confers the general power of recognition on the Speaker. 98–2, Jan. 26, 1984, pp 449, 450.

By unanimous-consent agreement, it may be made in order to consider a bill ''under the general rules of the House.'' 87–1, July 31, 1961, p 14050; see also 91–1, Mar. 27, 1969, p 7895. If on the Union Calendar the bill will then normally be considered in the Committee of the Whole; however, the bill may be called up pursuant to the agreement and then by unanimous consent considered in the House *as in* Committee of the Whole. 91–1, Apr. 1, 1969, p 8136.

A unanimous-consent agreement permitting the consideration of a measure may specify the time at which the measure is to be called up—either immediately or on a subsequent day—and may also limit the duration of debate, provide how it is to be divided, waive certain points of order, and make provision for the number and kinds of amendments and motions that may be offered. 97–2, June 23, 1982, p 14989; 99–1, Dec. 12, 1985, p 36174.

This unanimous-consent procedure may be applied across a wide range of House legislative business. It may be used:

- To call up for consideration a nonprivileged resolution. Deschler Ch 23 § 47.4.
- To consider a bill under the general rules of the House. 87–1, July 31, 1961, p 14050; 91–1, Mar. 27, 1969, p 7895.
- To call up as privileged a bill not otherwise in order. 92–1, Sept. 29, 1971, p 33826; 95–1, Feb. 17, 1977, pp 4579–81.
- To agree to a special order for the consideration of certain business. 4 Hinds §§ 3165, 3166; 7 Cannon §§ 758–760.
- To permit consideration in the House on any subsequent day of a bill to be introduced by the Chairman of the Appropriations Committee. 97–2, June 23, 1982, p 14989.
- To discharge the Committee on Appropriations from consideration of a joint resolution continuing appropriations. 99–1, Dec. 12, 1985, p 36174.
- To discharge the Committee of the Whole from further consideration of a bill being read for amendment under a special order, and agreeing that certain amendments be considered as agreed to. 98–1, Nov. 18, 1983, p 34160.

- To consider a bill reported from the Committee on Ways and Means extending the public debt limit, and waiving all points of order against the bill and a committee amendment thereto. 98–2, June 27, 1984, pp 19076, 19077.
- To consider a measure in the House under provisions ordering the previous question on the bill and amendments to final passage without intervening motion except one motion to recommit. 98–2, June 27, 1984, pp 19076, 19077.

Unanimous-consent procedures generally, see UNANIMOUS-CONSENT AGREEMENTS.

§ 7. In Committee of the Whole

The Committee of the Whole considers business on the Union Calendar—that is, public bills. 4 Hinds § 4705; Deschler Ch 19 § 1. Bills raising revenue, general appropriation bills, and bills of a public character appropriating money or property, are referred to this calendar. *Manual* § 742. Although the jurisdiction of the Committee is devoted primarily to the consideration of public bills, other matters may be taken up in the Committee pursuant to House order. Even measures on the House Calendar may be taken up in the Committee of the Whole by unanimous consent or pursuant to a special rule, including propositions to change the rules of the House. 4 Hinds § 4822; 91–2, July 13, 1970, p 23901; 93–2, Sept. 30, 1974, p 32953.

Legislative measures are referred to the Union Calendar for subsequent consideration in the Committee of the Whole by the Speaker. Their consideration therein is governed by special rules reported by the Committee on Rules or by the standing rules applicable to the Committee of the Whole. See Rule XXIII.

The House may agree to resolve into the Committee pursuant to a special rule, by unanimous-consent agreement, or by motion. 4 Hinds § 3214; 7 Cannon §§ 783, 794; Deschler Ch 19 § 4. And when no other business is pending, the Speaker is authorized under a rule adopted in 1983 to declare the House resolved into the Committee to consider a measure if the House has previously adopted a special order providing for its consideration, unless the special order specifies otherwise. *Manual* § 862. Since this rule was adopted, it has become the most frequently used mechanism for resolving into the Committee for the consideration of nonprivileged bills. For first use, see 98–1, July 14, 1983, p 19133.

Under some circumstances, the House *automatically* and without motion or declaration resolves itself into the Committee of the Whole to consider a measure. This occurs, for example, when a special rule from the Commit-

tee on Rules provides for the immediate consideration of the measure in the Committee of the Whole. 7 Cannon §§ 783, 794; Deschler Ch 19 § 4.1.

For more comprehensive discussion, see COMMITTEES OF THE WHOLE.

§ 8. In the House as in Committee of the Whole

Bills and other measures are sometimes taken up by the House when it sits ''as in'' Committee of the Whole. *Manual* § 427. This practice permits consideration of a measure under the five-minute rule rather than the hour rule, and without general debate. 4 Hinds § 4924; *Manual* § 424. The Speaker remains in the Chair, and a quorum of the House (and not of the Committee of the Whole) is required. 6 Cannon § 639. The measure is considered to have been read for amendment, and is open to amendment at any point. 91–2, Aug. 10, 1970, p 28050. See also COMMITTEES OF THE WHOLE.

A motion to close debate on the pending measure (or an amendment) is in order. 93–1, June 26, 1973, p 21314. The measure may be brought to a vote pursuant to the motion for the previous question (4 Hinds §§ 4926–4929), and a motion to reconsider will lie (8 Cannon § 2793).

The normal method for initiating consideration in the House as in the Committee of the Whole is by unanimous consent. A motion that a proposition be considered under that procedure is not in order. 4 Hinds § 4923; *Manual* § 424. On occasion, a special rule from the Committee on Rules has provided for the consideration of a proposition in the House as in the Committee of the Whole. 93–2, Dec. 18, 1974, p 40858.

§ 9. Limitations on Debate; Nondebatable Matters

Generally; Time Limitations

Debate is subject to many limitations under the rules of the House and its precedents. Most of the limitations imposed by House rule are time limitations—that is, limitations on the duration of time that is allowed to debate a particular proposition. These include, for example, the hour rule (*Manual* § 758), the 40-minute rule (*Manual* §§ 805, 907), the 20-minute rule (*Manual* § 908), the 10-minute rule (*Manual* § 874), the five-minute rule (*Manual* § 870) and the time limits that are imposed on the one-minute speeches or special-order speeches that are often permitted when no legislative business is pending (*Manual* § 754). For more detailed discussion, see §§ 44–50, infra.

Most of these are rules of general applicability that may be invoked at any time under the conditions specified by the particular rule. In addition, the House may adopt a special rule from the Committee on Rules which places limits on the duration of debate on a particular legislative proposal.

This practice enables the House, by majority vote, to specify a relative short or relatively long period of time for debate, depending on the complexity of the proposed measure.

Unless otherwise provided by House rule or by a special rule from the Committee on Rules, a proposition brought before the House is debated under the hour rule. §§ 44, 45, infra. However, the various motions which may apply to a proposition often carry their own time limitations for debate and in some instances preclude debate entirely. The motions for the previous question or to lay on the table, for example, are not debatable. *Manual* § 782.

Matters Not Subject to Debate

The relevant standing rule and the precedents on a motion or question must be consulted in order to determine whether debate thereon is precluded. The checklist below shows examples of questions that are not subject to debate.

- A motion that the Journal be read in full. *Manual* § 621.
- Motions to go into Committee of the Whole. 4 Hinds §§ 3062, 3078; 6 Cannon § 716.
- Motions that the Committee of the Whole rise and report. 4 Hinds §§ 4766, 4782; Deschler Ch 19 § 22.4.
- Motions for a call of the House (6 Cannon § 683), or incidental to a call of the House (6 Cannon § 688). See also *Manual* § 771a.
- Resolutions authorizing the Sergeant at Arms to arrest absentees. 6 Cannon § 686.
- Motions to fix the day to which the House shall adjourn. 5 Hinds §§ 5379, 5380; 8 Cannon § 2648; *Manual* § 784.
- Resolutions providing for a *sine die* adjournment or for adjournment to a day certain. 90–1, Aug. 28, 1967, p 24201; 93–2, Dec. 20, 1974, p 41815.
- Motions to adjourn or to adjourn *sine die*. 98–2, Oct. 11, 1984, p 32232; *Manual* § 782.
- Motions to lay on the table. 6 Cannon § 415; 8 Cannon § 2465; 98–2, Oct. 4, 1984, pp 30042, 30043.
- Motions to reconsider an undebatable proposition. 5 Hinds §§ 5694–5699; 96–1, Sept. 20, 1979, pp 25512, 25513.
- Motions to close general debate (5 Hinds § 5203) or to limit five-minute debate. 95–1, May 18, 1977, p 15418.
- Motions to strike unparliamentary language from the Record. 6 Cannon § 617; 96–1, June 12, 1979, p 14461.
- Incidental questions of order after a demand for the previous question. *Manual* § 811.
- Incidental questions of order rising during a division. 5 Hinds § 5926.

- Motions that the Committee of the Whole take up a bill out of calendar order. 8 Cannon §§ 2331, 2333.
- Motions for a change of reference of a bill. *Manual* § 854.
- The question of consideration. 73–2, June 1, 1934, p 10239.
- Questions relating to the priority of business. *Manual* § 900.
- Appeals from a decision of the Chair on the priority of business. 5 Hinds § 6952; *Manual* § 900.
- Appeals from a decision of the Chair on relevancy. 5 Hinds §§ 5056–5063.
- Appeals from a decision of the Chair on the dilatoriness of motions. 5 Hinds § 5731.
- Amendments to the title of a bill. 8 Cannon § 2907; *Manual* § 822.
- Questions as to admissibility of evidence in impeachment trials. 6 Cannon § 490.

B. Control and Distribution of Time for Debate

§ 10. In General; Role of Manager

Under a practice of long-standing, one or more designated Members manage a bill during its consideration in the Committee of the Whole and on the floor of the House. Such managers are normally designated by the committee reporting the measure. Typically, it will designate two managers, a senior majority member of the committee (or subcommittee)—often its chairman—and senior minority member of the committee (§ 14, infra).

The majority manager of a bill has procedural advantages enabling him to expedite its consideration and passage. He is entitled to the prior right to recognition unless he surrenders or loses control or unless a preferential motion is offered by an opponent of the bill. See RECOGNITION. If the bill is to be taken up in the House, the manager offers it and he is ordinarily entitled to one hour of debate, which he may in his discretion yield to other Members. See § 15, infra. He may at any time during his hour move the previous question, thereby bringing the matter to a vote and terminating further debate, unless he has yielded control of half the debate time to the minority. See § 45, infra. See also PREVIOUS QUESTION.

The manager of a bill enjoys a similar advantage in the Committee of the Whole where the bill is being considered by a special rule or unanimous-consent agreement. General debate therein is controlled and divided by the Members in charge. When the bill is read for amendment in the Committee, the managers have the prior right to recognition and may move to close or to limit debate or move that the Committee rise. Similarly, if the bill is taken up in the House *as in* the Committee of the Whole, priority

of recognition is extended during debate to members in charge of the bill from the reporting committee. See RECOGNITION.

§ 11. Distribution and Alternation

The distribution of available time for debate, and the alternation of time between majority and minority members, is governed by principals of comity and by House tradition, as well as by standing rules of the House and by special rules from the Committee on Rules. A division of time for debate on certain motions may be required and an opposition Member may claim a priority to control half the time. See Rule XXVII clause 2 (requiring a division of time for debate on a motion to suspend the rules). *Manual* § 907. Time may be claimed by a Member opposed on conference reports, motions to instruct conferees and amendments reported from conference in disagreement. Rule XXVIII.

The Chair alternates recognition between those favoring and those opposing the pending proposition where a rule or precedent gives some control to an opponent, or traditionally between the parties where time is limited. Special rules commonly divide control of general debate time equally between the majority and minority parties; ''modified rules'' governing the amendment process commonly divide such control between a proponent and an opponent of the amendment in the modern practice. When a special rule itself is being considered, the majority floor manager customarily yields half of the time to the minority. Alternation generally, see RECOGNITION.

§ 12. Management by Committee

Once a measure has been approved by a standing committee of the House, its chairman has a duty under the rules to report it promptly, and to take steps to have the matter considered and voted upon. Rule XI clause 2. When the measure is called up, the reporting committee manages the bill during the various stages of its consideration. The designated managers from the committee, and then other members of the committee in order of seniority, have priority of recognition at all stages of consideration. See RECOGNITION. If the chairman is opposed to the bill, the responsibility for managing the bill may be delegated to the ranking majority member of the committee. 90–1, June 14, 1967, p 15822. The chairman may also relinquish control where the Committee of the Whole has adopted amendments to the bill to which he is opposed. 84–2, July 5, 1956, p 11849. Such delegation of control is ineffective where challenged unless communicated to the Chair. 88–2, Jan. 31, 1964, p 1538.

Where the measure falls within the jurisdiction of two standing committees, the chairman of one of them may yield to the chairman of the other committee to control part of the available time and to move the previous question. 91–2, May 13, 1970, pp 15291–97.

A member of the committee in charge of a bill is entitled to close debate on an amendment. Ordinarily the manager of a bill or other representative of the committee position—and not the proponent of an amendment—has the right to close debate on an amendment. This remains true where debate has been limited and allocated in Committee of the Whole. 8 Cannon § 2581; 99–1, July 10, 1985, p 18496; 100–2, May 2, 1988, p 9638; 100–2, May 5, 1988, pp 9961, 9962. Even the minority manager may claim this right, if he represents the committee. 99–2, Aug. 14, 1986, p 21660; *Manual* § 762. This practice when debating amendments under the five-minute rule is at variance from the provisions of clause 6, Rule XIV which otherwise provides that the mover, proposer or introducer of the pending matter has the right to speak in reply after all others have spoken.

§ 13. Designation of Managers

The committee reporting a measure ordinarily designates the Members who will control debate on the floor when the measure is called up for consideration. See for example, 76–3, June 6, 1940, p 7706. However, managers are sometimes designated by special rule from the Committee on Rules (§ 14, infra), or by the Chair if the proposition is not being considered pursuant to a special rule. 91–1, July 30, 1969, p 21420. If the special rule does not specifically designate the Members in control, or if the designated managers are absent, the Chair may in his discretion recognize a committee member to control debate. 91–1, Dec. 23, 1969, p 40982. Control may also be fixed by unanimous consent. 89–2, May 26, 1966, p 11608.

§ 14. Effect of Special Rules

Generally

The designation of certain Members to control debate on a measure is frequently provided for by special rule from the Committee on Rules. Typically the Committee on Rules will draft a special rule that provides that debate be equally divided and controlled by the chairman and ranking minority member of the reporting committee. See, for example, 84–1, Apr. 26, 1955, p 5119. That control can be delegated to a designee.

Dividing Debate Between Multiple Committees

A special rule from the Committee on Rules may specify that debate be divided between and controlled by two or more standing committees. See 91–2, Nov. 24, 1970, p 38746; 94–2, May 19, 1976, p 14377. The special rule may provide that debate be controlled by the chairmen and ranking minority members of the several committees reporting a bill, with the sequential committees controlling a lesser amount of time. 94–2, July 30, 1976, p 24777. Debate may also be divided between the standing committee reporting a bill and a permanent select committee. 95–1, Sept. 9, 1977, p 28367.

Where a special rule divides the control of general debate on a bill among the chairmen and ranking members of two standing committees, but does not specify the order of recognition, the Chair may exercise his discretion. He may allow one committee to use its time, then go to the other or may rotate between the four managers.

If the rule divides control of debate among a primary reporting committee and several sequentially reporting committees in a designated order, the Chair may allocate time between the chairman and ranking minority member of each committee in the order listed if and when present on the floor, and permit only the primary committee to reserve a portion of its time to close general debate. 97–2, June 17, 1982, p 13991. Under these circumstances, the sequential committees are required to utilize all of their time prior to the closing debate by the primary committee. 99–1, Dec. 5, 1985, pp 34638, 34644.

Division of Time Between a Member in Favor and a Member Opposed

In the event that a specified amount of time is equally divided and controlled on an amendment between the proponent of the amendment and a Member opposed thereto, only one Member may be recognized to control the time in favor of the amendment and only one Member may be recognized to control the time in opposition, though each may in turn yield blocks of time to other Members. *Pro forma* amendments are not permitted unless so specified. Compare 99–2, Aug. 11, 1986, pp 20678, 20679; 99–2, Aug. 14, 1986, p 21655. Debate time on the amendment having been divided between the proponent and an opponent, the Chair may in his discretion recognize the manager of the bill if opposed, there being no requirement for recognition of the minority party. 99–2, June 18, 1986, pp 14275, 14276. Indeed, the Chair ordinarily recognizes the chairman of the committee managing the bill if he qualifies as opposed to the amendment. 97–2, Aug. 5, 1982, p 19653.

A special rule may provide that, after general debate divided between the chairman and ranking minority member of the reporting committee, a certain amount of time for general debate be divided and controlled by a Member in favor of and a Member opposed to a certain section of the bill. 96–1, Sept. 13, 1979, pp 24168, 24192. In one instance, the House adopted a special rule providing for one hour of general debate to be equally divided and controlled by the chairman and ranking minority member of the reporting committee, and two hours to be divided and controlled by Members to be designated by the chairman. 95–2, July 31, 1978, p 23451.

§ 15. Yielding Time—For Debate

In General; Who May Yield

In an earlier era, a Member could not yield debate time without losing his right to reoccupy the floor. A Member could not yield the floor unless he yielded it unconditionally. 5 Hinds §§ 5023, 5026. That practice began to change with the adoption of the hour rule for debate. 5 Hinds § 5021.

Under current practice, a Member controlling the time during general debate may yield time for debate to others, take his seat, and still retain the right to resume debate or move the previous question. 8 Cannon § 3383. The yielding of time for general debate is discretionary with the Members who have control thereof. 86–1, Aug. 12, 1959, p 15678; 98–2, Aug. 2, 1984, p 22241. A Member may not yield for purposes of debate where he has risen merely to make or reserve a point of order. 99–1, Oct. 1, 1985, p 25419.

A Member who seeks yielded time should address the Chair and request the permission of the Member speaking (84–2, June 29, 1956, p 11455). Where a Member interrupts another Member during debate without being yielded to the time consumed by his remarks will not be charged against the debate time of the Member controlling the floor and the remarks are not carried in the Record. 99–1, Feb. 7, 1985, p 2229. A Member may yield to another for a parliamentary inquiry, but the time consumed by the inquiry and the response of the Chair do come out of the time of the Member yielding. See 88–2, Feb. 5, 1964, p 1998.

The time used during yielded time is ordinarily charged against the Member with the floor. 92–2, June 1, 1972, p 19476. Unused remaining time reverts to the yielding Member. 99–1, Mar. 4, 1985, pp 4280–83.

In the House

The Member in control of general debate in the House under the hour rule may in his discretion yield for debate. See 82–1, May 17, 1951, pp

5435–45; 86–1, Aug. 12, 1959, p 15678; 91–2, Aug. 10, 1970, p 28005. Indeed, although not required to do so by standing rule, majority members in control under the hour rule frequently yield one-half the time to the minority in order that full debate may be had. 87–1, Aug. 8, 1961, p 14947; 87–2, Aug. 29, 1962, pp 18029–36. Of course, the yielding of time must be consistent with any division of time that is required by House rule or a special rule from the Committee on Rules.

Debate time yielded back by a Member to whom time has been yielded under the hour rule reverts to the Member in control of the hour. 99–1, Mar. 4, 1985, pp 4280–83.

In Committee of the Whole

In the Committee of the Whole, a Member in control of time for general debate may yield a block of time (up to one hour) to another Member. 97–1, May 4, 1981, p 8331.

During five-minute debate Members may yield, as for a question or comment, but may not yield blocks of time. 5 Hinds §§ 5035–5037; 100–1, May 8, 1987, p 11832. A Member yielding to a colleague during debate under the five-minute rule should remain standing to protect his right to the floor. 88–2, Mar. 12, 1964, p 5100. If a Member uses only part of his time, his five-minute period is treated as exhausted, cannot be reserved, and another Member cannot claim recognition for the unused time. 8 Cannon § 2571. But where debate on an amendment is limited or allocated by a unanimous-consent agreement or motion, or by a special rule, to a proponent and an opponent, the five-minute rule is abrogated and the Members controlling the debate may yield and reserve time. *Manual* § 873.

Yielding During Debate on Special Rules

The traditional practice with regard to resolutions from the Committee on Rules providing special rules for the consideration of measures is for the Member in charge of the resolution to yield one-half of the time to the minority who then may yield specified portions thereof. While the minority member of the Committee on Rules to whom one-half of the debate time is yielded customarily yields portions of that time to other Members, another Member to whom a portion of time is yielded may in turn yield blocks of that time only by unanimous consent. 94–2, Jan. 29, 1976, p 1632. However, where a Member has been recognized under the hour rule following refusal of the previous question on such a resolution, he has control of the time and is under no obligation to yield half of that time as is the customary practice of the Committee on Rules. 89–2, Oct. 19, 1966, pp 27713–29.

Yielding Time During Yielded Time

A Member to whom time has been yielded during debate under the hour rule in the House may, while remaining on his feet, yield to a third Member for comments or questions but may not in turn yield blocks of time. Where a Member is yielded time in the House for debate only, he may not yield to a third Member for purposes other than debate. 91–2, Aug. 10, 1970, p 28005; 92–1, Nov. 8, 1971, pp 39889, 39892.

A Member to whom a specific amount of time has been yielded for debate in the House may not, in turn, yield a portion of that allotted time to a third Member except by unanimous consent. 99–2, Aug. 6, 1986, p 19349. A similar rule is followed in the Committee of the Whole. While a Member in control of time for general debate may yield time to another Member, that Member in turn may yield a block of time to a third Member only by unanimous consent. 97–1, May 4, 1981, p 8331.

§ 16. — Yielding for Amendment

In General

A Member controlling debate in the House on a measure may yield to another to offer an amendment (89–1, Sept. 17, 1965, p 24290), despite his prior announced intention not to yield for such purpose (92–1, Apr. 29, 1971, pp 12489, 12504). A Member to whom time is yielded for the purpose of offering an amendment is recognized in his own right to discuss the amendment. 8 Cannon §§ 2471, 2478. The Member offering the amendment is recognized for an hour and may himself yield time. 89–1, Sept. 17, 1965, p 24290.

A measure being considered in the House is not subject to amendment by a Member not in control of the time unless the Member in control yields for that purpose. 89–1, Jan. 4, 1965, p 20. A Member may not offer an amendment in time secured for debate only (8 Cannon § 2474), or request unanimous consent to offer an amendment unless yielded to for that purpose by the Member controlling the floor. *Manual* § 750.

Loss of Control by Yielding Member

A Member may not yield to another Member to offer an amendment without losing the floor. 5 Hinds §§ 5021, 5030, 5031; 8 Cannon § 2476; *Manual* § 750. Where a Member controlling the time on a measure in the House yields for the purpose of amendment, another Member may move the previous question on the measure before the Member yielded to is recognized to debate his amendment. 92–1, Nov. 8, 1971, p 39944. The previous question takes precedence over an amendment. See Rule XVI clause 4.

Manual § 782. If the Member calling up a measure offers an amendment and then yields to another Member to offer an amendment to his amendment, he loses the floor and the Member to whom yielded is recognized for one hour and may move the previous question on the amendments and on the measure itself. 95–1, Dec. 6, 1977, p 38393.

Under the Five-minute Rule

A Member recognized under the five-minute rule may not yield to another Member to offer an amendment. It is the prerogative of the Chair to recognize Members offering amendments under the five-minute rule. 93–1, Apr. 19, 1973, p 13240; 95–2, May 18, 1978, p 14410; 95–2, July 13, 1978, p 20653; *Manual* § 750. However, a Member recognized under the five-minute rule may by unanimous consent yield the balance of his time to another Member who may thereafter offer an amendment when separately recognized by the Chair for that purpose. 94–1, Oct. 30, 1975, p 34442.

A Member offering a pro forma amendment under the five-minute rule may not yield to another Member during that time to offer an amendment. 97–2, July 29, 1982, p 18593.

§ 17. Interruptions; Losing or Surrendering Control

In General

A Member may interrupt another Member in debate only if yielded to. 95–2, Oct. 14, 1978, p 38378. A Member desiring to interrupt another in debate should address the Chair to obtain the permission of the Member speaking. 87–1, June 7, 1961, p 9681. The Member speaking may then exercise his own discretion as to whether or not to yield. The Chair will take the initiative in preserving order when a Member declining to yield in debate continues to be interrupted by another Member. 98–2, July 26, 1984, p 21247.

A Member in control of time during House debate may voluntarily surrender the floor by simply so stating (90–1, June 14, 1967, p 15822), or by withdrawing the measure he is managing (88–2, Apr. 8, 1964, pp 7302–04).

A Member loses the floor if he yields for other legislative business (8 Cannon § 2468) or for an amendment (§ 16, supra). A Member may also lose the floor if he is ruled out of order for disorderly language. 88–1, Oct. 31, 1963, p 20742.

A Member may be interrupted by a point of order or by the presentation of privileged matter, such as a conference report. 5 Hinds § 6451; 8

Cannon § 3294. In addition, it is customary for the Speaker to request a Member to yield for the reception of a message. *Manual* § 750.

While a motion proposed by the Member in charge may be displaced by a preferential motion, a Member may not by offering such motion deprive the Member in charge of the floor. 8 Cannon § 3259. A Member having the floor may not be deprived of the floor and taken off his feet:

- By a motion to adjourn. 5 Hinds §§ 5369, 5370; 8 Cannon § 2646.
- By a demand for the previous question. 8 Cannon § 2609.
- By a question of personal privilege. 5 Hinds § 5002; 8 Cannon § 2459; 98–1, Sept. 29, 1983, pp 26508, 26509.

Interruptions for Parliamentary Inquiries

A Member may not be interrupted by another for a parliamentary inquiry without his consent. 8 Cannon §§ 2455–2458; 90–1, July 17, 1967, p 19033. An interruption for a parliamentary inquiry is not in order unless the Member having the floor yields for that purpose. 99–1, Feb. 25, 1985, pp 3345–47. Nor will he lose control of the floor if he does yield for that purpose, since he retains the right to resume. Thus, a Member who has been yielded time for a parliamentary inquiry may not during his inquiry move that the House adjourn, for that would deprive the Member holding the floor of his right to resume. 88–2, June 3, 1964, p 12522.

Where the Member controlling the time yields to another for debate, the latter may, during the time so yielded, propound a parliamentary inquiry (90–1, July 17, 1967, p 19033) and the time consumed to state and answer the inquiry is deducted from his time for debate. 94–1, Sept. 25, 1975, p 30196. And when the Member holding the floor during general debate yields solely for a parliamentary inquiry, the time continues to run against him. 90–1, Mar. 1, 1967, p 4997; 90–1, July 17, 1967, p 19033. However, when the Chair entertains a parliamentary inquiry before the Member managing the pending measure in the House has been recognized for debate, the time consumed by the inquiry does not come out of his time. 99–2, Oct. 8, 1986, pp 29714, 29715.

C. Relevancy in Debate

§ 18. In General; In the House

Under the House rules, a Member addressing the House must ''confine himself to the question under debate. . . .'' Rule XIV clause 1. *Manual* § 749. This rule, which was adopted in 1811 (5 Hinds § 4979), enables the House to expedite proceedings when a specific proposition is before it for

action. 5 Hinds §§ 5043–5048; 8 Cannon § 2481; *Manual* § 752. The rule is directed against irrelevant discussion, not mere redundancy. Although Jefferson's Manual enjoins superfluous or tedious remarks, in practice the House has never suppressed debate of this character, the hour rule being regarded as sufficiently restrictive in that regard. *Manual* § 359.

Rule XIV clause 1 requires that debate be related to the pending measure. Thus, debate on a reported resolution pending before the House should be confined thereto, and should not be extended to an unreported bill even though on the same subject. 5 Hinds § 5053. Likewise, where an amendment is before the House, debate should be confined to that amendment, and should not include discussion of the general merits of the bill. 5 Hinds §§ 5049–5051. The rule is applicable to debate on private bills (8 Cannon § 2590) and to bills on the Corrections Calendar (104–1, Nov. 14, 1995, p ____; 104–2, Mar. 12, 1996, p ____)..

It was the custom of the earlier Speakers to hold the Member speaking strictly to the question before the House, without waiting for the point to be made on the floor. See 5 Hinds § 5043 (note). Under modern practice the Speaker rarely calls to order, on his own initiative, a Member speaking to an unrelated question, but waits for a point of order to be made. 101–2, Sept. 27, 1990, p ____.

Some Speakers have applied the rule of relevancy with more tolerance and latitude than other Speakers. Compare 88–1, Dec. 10, 1963, p 23968 (Speaker McCormack), and 5 Hinds § 5048 (Speaker Reed). And a Member is sometimes permitted to discuss matters other than the pending measure by unanimous consent. 95–2, Sept. 25, 1978, p 31197. Absent unanimous consent, if a point of order is made and sustained, the Speaker must direct the Member speaking to confine his remarks to the question (5 Hinds §§ 5044–5048) and to maintain an ongoing ''nexus'' between the pending bill and broader policy issues (104–1, Nov. 14, 1995, p ____; 104–2, Mar. 12, 1996, p ____).

The relevancy requirement of Rule XIV is applicable to floor debate on pending propositions. It is not applicable to a Member making a one-minute or special-order speech. See § 51, infra.

When a resolution reported from the Committee on Rules is pending, debate must be confined to that special rule and to the merits of the bill made in order thereby. 94–2, Aug. 5, 1976, p 25778; 102–1, Oct. 1, 1991, p ____. But debate should not extend to the merits of a bill that is not to be considered under the special order. 101–2, Sept. 27, 1990, p ____.

Debate on a question of personal privilege must be confined to the statements or issue which gave rise to the question of privilege (5 Hinds §§ 5075–5077; 6 Cannon §§ 576, 608; 8 Cannon §§ 2448, 2481; 98–2, May

31, 1984, p 14623). Debate on a privileged resolution recommending disciplinary action against a Member, may include comparisons with other such actions taken by or reported to the House for purposes of measuring the severity of punishment, but should not extend to the conduct of another Member not the subject of a committee report. 100–1, Dec. 18, 1987, p 36271.

§ 19. In Committee of the Whole— General Debate

In the Committee of the Whole, during the general debate which precedes the reading of the bill for amendment under the five-minute rule, a Member is allowed great freedom and latitude in debate. ''Anything may be discussed which may by the liveliest imagination be supposed to relate to the state of the Union in any particular or in any degree, however remote.'' 8 Cannon § 2590. However, such license is normally suppressed by the special rule or other House order setting the duration and scope of the debate. 5 Hinds §§ 5233–5238; 8 Cannon § 2590; 93–2, June 28, 1974, pp 21743, 21744.

§ 20. — Under the Five-minute Rule

Debate under the five-minute rule in Committee of the Whole must be confined to the pending amendment when that point of order is raised; this is so even if a Member is attempting to respond to previous extraneous remarks in debate against which no point of order was raised. 97–2, Sept. 23, 1982, p 24968. A Member must confine himself to the subject of the amendment and its relation to the bill. 5 Hinds §§ 5240–5256. 88–2, Jan. 21, 1964, p 755. Debate is confined to the subject then pending (91–1, Sept. 4, 1969, p 24372), even on *pro forma* amendments (8 Cannon § 2591). However, a Member may speak to another subject by unanimous consent. This is permitted even where the Committee is proceeding pursuant to the provisions of a special rule permitting only designated amendments to be offered. 95–1, Aug. 3, 1977, p 26483.

D. Disorder in Debate

§ 21. In General

Generally

Among the oldest rules of the House are those which authorize the Speaker to maintain order and decorum in the House (Rule 1 clause 2, *Manual* § 622) and to call a Member to order where he has transgressed the rules of the House ''in speaking or otherwise'' (Rule XIV clause 4, *Manual*

§ 760). This language makes it clear that Members must not only follow all the rules and requirements for the conduct of business in the House, but must also observe the principles of decorum and courtesy in debate, as set forth in Rule XIV (*Manual* §§ 749 *et seq.*), and by related provisions in *Jefferson's Manual* (see §§ 353 *et seq.*).

Time consumed by proceedings incident to a call to order is not charged against the time of the Member under recognition. 102–2, Oct. 3, 1992, p ____.

A Member may be called to order during debate in the House, and another Member may make timely demand that the words used be taken down and read aloud at the Clerk's desk. The Chair then rules as to whether the words or actions of the Member are disorderly. Whether the offending Member is to be allowed to proceed in order or is to be disciplined is determined by vote of the House. (§§ 26 *et seq.*, infra.)

Disorderly Acts

Decorum in the conduct and behavior of Members on the floor of the House is governed in part by Rule XIV clause 7. *Manual* § 763. Prohibited conduct under the rule includes:

- Walking out of or across the hall while the Speaker is addressing the House.
- Passing between the Chair and a speaking Member.
- Wearing a hat.
- Using personal electronic office equipment, including cellular phones and equipment.
- Remaining by the Clerk's desk during roll calls.
- Smoking.

A Member's comportment may constitute a breach of decorum even though the content of that Member's speech is not, itself, unparliamentary. 103–2, July 29, 1994, p ____.

Demonstrations of approval or disapproval, such as applause, are not a part of the proceedings of the House. 79–1, Mar. 6, 1945, pp 1789 *et seq.* While a Member has the floor, he may not request Members to act contrary to the rules, such as showing hands or rising in support of a certain measure. 84–1, May 5, 1955, p 5778.

The Chair may entertain a demand to clear the well in the event of disorder therein. 88–1, Dec. 9, 1963, p 23831. The Sergeant at Arms attends the sittings of the House and the Committee of the Whole and maintains order under the direction of the Speaker or Chairman. Rule IV clause 1. *Manual* § 648. See also 1 Hinds § 257.

Acts of physical violence by one Member or between two Members during or after heated debate have occurred. 2 Hinds §§ 1642, 1643. For other instances involving altercations between Members, see 2 Hinds §§ 1644, 1655, 1656; 88–1, Oct. 29, 1963, p 20413. Assaults or affrays in the Committee of the Whole are dealt with by the House. 2 Hinds §§ 1648–1651.

Attire

The Speaker has announced as proper the customary traditional attire for Members, including a coat and tie for male Members and appropriate attire for female Members, when in attendance in the House Chamber. In one instance, the Speaker refused to recognize for debate a Member in violation of the practice that Members were expected to follow traditional standards of dress, and requested the Member in question to remove himself from the floor and don proper attire. The House subsequently agreed to a resolution, offered as a question of privilege of the House, requiring Members to wear proper attire as determined by the Speaker, and denying noncomplying Members the privilege of the floor. 96–1, July 17, 1979, p 19008.

Exhibits and Charts; Badges

While Members are permitted to use exhibits such as charts during debate (subject to the permission of the House under Rule XXX), the Speaker's responsibility to preserve decorum requires that he disallow the use of exhibits in debate which would be demeaning to the House or which would be disruptive of its proceedings, in which case no vote of the House is required. 101–2, Oct. 16, 1990, p ____.

The display of any object in debate by way of illustration is always subject to the will of the House. 8 Cannon § 2452. Where objection is made the question is put to the House without debate. *Manual* § 915. Exhibits generally, see § 61, infra.

In recent years, Members occasionally have worn badges of various sorts on the floor to convey political messages to their colleagues and to the television audience. The Speaker has advised Members that the wearing of badges on the floor while engaging in debate is inappropriate and in contravention of clause 1, Rule XIV. 99–2, Apr. 15, 1986, p 7525; 104–1, Mar. 29, 1995, p ____.

Speaker's Announcements

In recent Congresses, on opening day, the Speaker has stressed the importance of various rules of decorum in the House. He prefaced his cus-

tomary announcement with a general statement concerning decorum in the House, including adjurations against engaging in personalities, addressing remarks to spectators, and passing in front of the Member addressing the Chair. ''It is essential,'' the Speaker said, ''that the dignity of the proceedings of the House be preserved, not only to assure that the House conducts its business in an orderly fashion but to permit Members to properly comprehend and participate in the business of the House.'' 101–1, Jan. 3, 1989, p 88; 102–1, Jan. 3, 1991, p ____. See also 103–1, Jan. 5, 1993, p ____.

§ 22. Disorderly Language

Members have been censured or otherwise disciplined for the use of disorderly words in debate (2 Hinds §§ 1254, 1259, 1305; 6 Cannon § 236), whether the words were uttered in the House or the Committee of the Whole (2 Hinds § 1259). *Manual* § 760. A Member may likewise be disciplined for the insertion of disorderly words in the *Congressional Record* without the consent of the House. 6 Cannon § 236. Members have been cautioned against the use of vulgarity or profanity in debate. 82–1, July 18, 1951, p 8415; 102–1, Mar. 5, 1991, p ____; 103–1, Feb. 18, 1993, p ____; *Manual* § 749. The Chair may call to order a Member engaging in or tending toward personalities in debate (100–1, June 29, 1987, p 18072), or for a verbal outburst following expiration of his time for debate (100–2, Mar. 16, 1988, p 4081). Critical references to Members, see §§ 37 *et seq.*, infra.

However, the context of the debate itself must be considered in determining whether the words objected to constitute disorderly criticism or do in fact fall within the boundaries of appropriate parliamentary discourse. The present-day meaning of language, the tone and intent of the Member speaking, and the subject of his remarks, must all be taken into account by the Speaker. There have been instances in which the same or similar word has on one occasion been ruled permissible and on another ruled unparliamentary. Thus the word ''damn'' has been ruled out of order (82–1, July 18, 1951, p 8415), whereas ''damnable'' has been permitted (80–2, Jan. 15, 1948, p 205).

§ 23. — References to Senate

Generally

A well-established rule of comity prohibits certain references in debate to the Senate or to individual Senators. Indeed, at one time there could be no reference to any debate or votes in the Senate on the same subject. This principal, first enunciated in *Jefferson's Manual* (see *Manual* § 371), was

strictly applied in the House for many years. See 5 Hinds §§ 5095 *et seq.*; 8 Cannon §§ 2501 *et seq.*

This principal was modified in 1987, and again in 1989, by amendments to Rule XIV. Under this rule:

> Debate [in the House] may include references to actions taken by the Senate or by committees thereof which are a matter of public record, references to the pendency or sponsorship in the Senate of bills, resolutions, and amendments, factual descriptions relating to Senate action or inaction concerning a measure then under debate in the House, and quotations from Senate proceedings on a measure then under debate in the House and which are relevant to the making of legislative history establishing the meaning of that measure, but may not include characterizations of Senate action or inaction, other references to individual Members of the Senate, or other quotations from Senate proceedings. *Manual* § 749.

References to the Senate or Its Proceedings

A Member is permitted to refer to the existence of the Senate and its functions in a general and neutral way. For example, a Member may oppose a *sine die* adjournment resolution on the grounds that Congress should stay in session to complete action on specified legislation then pending in the Senate. 5 Hinds § 5115. It is appropriate to state whether or not the Senate has acted on House-passed legislation as long as criticism is neither stated nor implied. If references to the Senate are appropriate, the Member delivering them is not required to use the term ''the other body,'' and the use of the term ''Senate'' is not a per se violation of the rule of comity. 98–2, Oct. 4, 1984, pp 30046, 30047; *Manual* § 371.

On the other hand, it is not in order to criticize Senate actions. 5 Hinds § 5114; 96–2, Dec. 10, 1980, p 33205; 103–1, Apr. 27, 1993, p ____. Statements in debate speculating as to the intent of the Senate with respect to legislation pending in the House remain a violation of the rule of comity. 98–2, Oct. 11, 1984, pp 32221–23. It is a breach of order in debate to refer to the motives of the Senate in passing certain legislation. 99–1, Oct. 17, 1985, p 27772. While a Member in debate may refer to the pendency of a House-passed bill in the Senate, it is a breach of order in debate to refer to a House bill as ''languishing'' in the Senate. 99–2, July 31, 1986, p 18253. Even statements urging the Senate to take action have been ruled out. 102–1, Oct. 8, 1991, p ____.

On one occasion, prior to the amendment of Rule XIV, the Speaker entertained a unanimous-consent request that a Member be permitted to refer in debate to certain Senate proceedings. 96–2, June 4, 1980, p 13212. But the Chair will not entertain such a request where the references would necessarily imply criticism of the Senate, such as to respond to remarks in the

Senate which were critical of Members of the House (8 Cannon § 2519). *Manual* § 371.

References to Individual Senators

With certain exceptions, under clause 1 of Rule XIV remarks in debate may not include references to individual Members of the Senate, and the Chair enforces this principle on his own initiative. 102–2, Oct. 2, 1992, p ____. References to individual Members of the Senate (98–2, Oct. 2, 1984, pp 28504, 28505), even in a complimentary or congratulatory way (99–2, Aug. 5, 1986, pp 19040, 19044; 103–1, Apr. 21, 1993, p ____) or to actions which named Members of the Senate, or Senators designated by position, might take, are out of order (98–2, Oct. 11, 1984, pp 32152, 32153). See also 99–2, Mar. 13, 1986, p 4625. It is not in order to refer critically to a Member of the Senate or to the actions of individual Senators. 98–2, May 8, 1984, pp 11421, 11425, 11428. In 1985, the Chair admonished a Member during debate not to refer to a Senator in a critical manner although not identified by name. 99–1, Dec. 18, 1985, pp 37813, 37814. Even a reference to another person's criticism of a Senator is a violation of the rule. 98–1, Aug. 4, 1983, pp 23136, 23145, 23147. It is also a violation of the rule of comity to refer in debate to specific votes by particular Members of the Senate, and the Chair calls Members to order on his own initiative when this occurs. 97–1, July 29, 1981, p 18249; 98–2, Apr. 12, 1984, pp 9474, 9477, 9478; 98–2, July 31, 1984, p 21670; and 99–2, Mar. 13, 1986, p 4636. Under the current rule a Senator's comments in debate may be quoted in the House when relevant to pending legislation. *Manual* § 749.

In one case, the personal views of a Senator, not uttered in the Senate, were allowed to be quoted in the House (5 Hinds § 5112), but the weight of recent precedent prohibits references to speeches or statements of Senators occurring outside the Senate Chamber. 8 Cannon § 2515; *Manual* § 371.

References to former Members of the House who are presently Senators are only permissible if they merely address prior House service and are not implicitly critical of Senatorial service. 98–2, May 8, 1984, p 11431.

References to Members of the Senate in their capacity as nominated candidates for the Presidency or other office are not prohibited, but references attacking the character or integrity of a Senator even in that context are not in order. 96–1, Oct. 30, 1979, p 30150; *Manual* § 371.

Debate may not include critical references to a named Senator in his capacity as a member of a House-Senate conference committee. But it is in order in debate, while discussing a question involving conference committee procedure, to state what actually occurred in a conference committee

session, without referring to or criticizing a named member of the Senate. 74–1, July 29, 1935, p 12011.

In 1985, a Member was called to order for referring in debate to remarks made by a Senator during a Senate committee hearing. 99–1, May 16, 1985, p 12229. In 1986, a Member, upon being cautioned by the Chair not to refer to a Senator in debate, obtained unanimous consent to refer to correspondence between the Senator and a federal official. 99–2, June 25, 1986, pp 15492, 15499, 15505.

Duties of the Chair

As noted in Jefferson's Manual (§ 374), it is the duty of the Speaker to call to order a Member who criticizes the actions of the Senate, its Members or committees. See also *Manual* § 760. Indeed, the Chair takes the initiative to prevent any debate in the House which may tend to reflect improperly upon the Senate or its Members in violation of the rule of comity. 97–1, Oct. 28, 1981, p 25681; 99–2, Sept. 30, 1986, pp 27393, 27394. He enforces the rule on his own initiative and may deny an offending Member further recognition. 97–2, June 16, 1982, p 13843. He may remind all Members not to make such references (98–2, Oct. 5, 1984, pp 30326, 30327), but he need not respond to hypothetical questions as to the propriety of possible characterizations of Senate actions prior to their use in debate. 99–1, Oct. 24, 1985, p 28819.

§ 24. — References to the Press, Media, or Gallery

References to the Media

A Member should address his remarks to the Chair, and only the Chair; it is not in order for a Member to address his remarks to ''the press.'' 88–1, Apr. 24, 1963, p 6892; 95–2, June 14, 1978, p 17615. Similarly, it is not in order in debate to address remarks to the ''television'' (96–1, Nov. 8, 1979, p 31519) or to television viewers (98–1, Sept. 29, 1983, pp 26499, 26501; 99–2, June 5, 1986, pp 12568, 12569), including those who may be watching by way of closed circuit television. 99–1, Oct. 9, 1985, p 26961; 103–1, Mar. 3, 1993, p ____. The Chair enforces the rule on his or her own initiative. 99–2, Feb. 25, 1986, pp 2676, 2677. Members in debate may not address remarks to ''our viewing audience.'' 98–2, Aug. 2, 1984, p 22271.

References to the Gallery

By rule of the House adopted in 1933, no Member may introduce or refer to any occupant of the galleries of the House. Rule XIV clause 8. *Manual* § 764. The rule is strictly enforced, and the Speaker ordinarily intervenes on his own initiative to prevent infraction thereof. 88–2, Feb. 6, 1964,

p 2267; 95–1, Oct. 19, 1977, p 34220; 95–2, June 14, 1978, p 17615. The rule may not be suspended by permission to proceed out of order, even by unanimous consent. 83–2, July 27, 1954, p 12253. The rule has been invoked to prevent a Member from making references to:

- An honored guest in the gallery who had exhibited ''great heroism.'' 83–2, July 27, 1954, p 12253.
- A Member's constituents sitting in the gallery. 79–1, Mar. 16, 1945, p 2371.
- A federal official present in the gallery who had an interest in the pending bill. 88–2, Feb. 6, 1964, p 2264.
- A ''disinterested, objective observer'' sitting in the gallery. 88–1, June 4, 1963, pp 10151–66.
- Family members present in the gallery. 99–2, July 29, 1986, p 17956.

§ 25. — References to Executive Officials

Jefferson wrote that in Parliament it was out of order to speak ''irreverently or seditiously'' against the King. *Manual* § 370. No analogous constraint exists in the rules of the House. Members in debate are permitted wide latitude in the use of language that is critical of the President, other officials of the executive branch, and the government itself. 5 Hinds §§ 5087–5091; 8 Cannon §§ 2499, 2500; 77–2, Feb. 25, 1942, p 1714. Such criticism is considered as inherent in the exercise of legislative authority. ''The right to legislate,'' said a report adopted by the House in 1909, ''involves the right to consider conditions as they are and to contrast present conditions with those of the past or those desired in the future. The right to correct abuses by legislation carries the right to consider and discuss [them].'' 8 Cannon § 2497. Members may employ strong language in criticizing the government, government agencies, and governmental policies. It has been held in order for a Member to:

- Refer to the government as ''something hated, something oppressive.'' 71–1, June 14, 1929, p 2924.
- Refer to the President as ''using legislative and judicial pork.'' 8 Cannon § 2499.
- Refer to a presidential message as a ''disgrace to the country.'' 5 Hinds § 5091.
- Refer to certain unnamed officials as ''our half-baked nitwits handling the foreign affairs. . . .'' 76–3, Oct. 1, 1940, p 12985.
- Refer to a federal agency as a ''socialist, communist'' experiment. 83–2, Mar. 31, 1954, p 4221.
- Refer to the government as a ''Labor dictatorship.'' 77–2, Feb. 26, 1942, p 1714.

On the other hand, the rules do not permit the use of language that is personally offensive toward the President (5 Hinds § 5094; 102–2, Oct. 2, 1992, p ____), such as calling the President a ''liar'' (99–1, June 26, 1985, p 17394) or ''hypocrite'' (102–2, Sept. 25, 1992, p ____). See also 8 Cannon § 2498. Members should refrain from discussing the President's personal character. 103–2, Mar. 10, 1994, p ____. A Member may not in debate describe the President's veto of a bill as ''cowardly'' (101–1, Oct. 25, 1989, p ____), or charge that he has been ''intellectually dishonest'' (101–2, May 9, 1990, p ____) or refer to him as ''giving aid and comfort'' to the enemy (104–1, Jan. 25, 1995, p ____).

Debate in the House may refer to the motives of the President but personal criticism, innuendo, ridicule, or terms of opprobrium are not in order. 8 Cannon § 2497. And they may not be inserted by reading from extraneous material. 103–1, Mar. 3, 1993, p ____. In one instance the Speaker advised that the traditional protections against unparliamentary references to the President did not necessarily extend to the President's family. 101–2, July 12, 1990, p ____. But such protection has been extended to all nominated candidates for the President. 102–2, Sept. 24, 1992, p ____. In 1995, the Chair advised that references to the personal conduct of the Vice President were not in order. 104–1, Jan. 18, 1995, p ____. Under Rule XIV, a Member may be called to order for alleged unparliamentary references to the President by a demand that the words be taken down for a ruling by the Speaker. 99–2, Aug. 12, 1986, pp 21078, 21079.

§ 26. Procedure; Calls to Order

In the House

Procedures are available under Rule XIV that enable the House to deal with disorderly words or actions by Members. A Member transgressing the rules may be called to order by the Speaker or by another Member. *Manual* § 760. The Member calling him to order may then demand that the words objected to be ''taken down'' and read to the House by the Clerk. *Manual* § 761. The business of the House is suspended until the words are reported to the House. 93–2, Aug. 21, 1974, pp 29652, 29653.

Briefly summarized, procedures available to deal with disorder include:

- Point of order raised against alleged unparliamentary language
- Demand that words be ''taken down''
- The Chair gavels the proceedings to a halt and directs the offending Member to take his seat
- Words taken down reported to the House by the Clerk
- Unanimous-consent request to withdraw words taken down

- Motion to allow Member to explain words taken down
- Speaker rules whether words are out of order
- Member ruled out of order must be seated and discontinue debate
- Motion to strike (or expunge) words
- Censure or other disciplinary action by the House
- Motion that the Member be allowed to proceed in order

The Speaker rules on the question of whether the words or actions objected to are out of order. 96–1, July 24, 1979, p 20380. The words having been read from the desk, the Chair decides whether they are in order (5 Hinds §§ 5163, 5169), as read by the Clerk and not as alleged to have been uttered (102–2, June 9, 1992, p ____). Pending his ruling, the Speaker may recognize the Member who made the statement to ask unanimous consent to withdraw or modify the words. 87–2, June 5, 1962, p 9739; 95–1, Mar. 2, 1977, p 5937. Withdrawal of words objected to, see § 29, infra. Whether the Member is to be allowed to proceed in order or is to be subjected to censure or other disciplinary measure is for the House to determine. *Manual* § 760.

A Member called to order for words spoken in debate is required to take his seat (5 Hinds § 5147), unless permitted to proceed in order by the House. 90–1, Aug. 14, 1967, p 22443. It is a breach of decorum for a Member to ignore the Chair's gavel and his instruction that the Member be seated. 103–2, July 29, 1994, p ____. Once required to take his seat because of unparliamentary language, the Member may proceed in order only with the consent of the House. 88–1, Oct. 31, 1963, pp 20742, 20744; 93–2, Aug. 21, 1974, pp 29652, 29653. He loses the floor (5 Hinds § 5199) and may not continue to participate in debate on the same day even on time yielded to him by another Member. 5 Hinds § 5147; 99–1, Mar. 19, 1985, p 5533.

Not all cases involving disorderly words require the taking down of words and other formal action by the House. In many instances, the Chair will observe that debate is becoming personal and approaching a violation of the rules, in which case he may simply request that Members proceed in order; the Members respond appropriately, and the House proceeds with its business. See, for example, 88–2, June 23, 1964, p 14717. Or the Chair may merely caution all Members on his own initiative or in response to a parliamentary inquiry not to question the integrity or motivation of other Members in debate. 99–1, Apr. 22, 1985, p 8693. Likewise, where a Member objects to unparliamentary remarks delivered in debate, but does not demand that the words be taken down, it is appropriate for the Chair to direct that Members proceed in order. 95–2, May 8, 1978, p 13215.

Form

CHAIR: For what purpose does the gentleman rise?

MEMBER: Mr. Speaker (or Mr. Chairman), I rise to a point of order.

CHAIR: The gentleman will state his point of order.

MEMBER: Mr. Speaker (or Mr. Chairman), I make the point of order that the gentleman from _____ is _____.

CHAIR: The point is well taken and the gentleman will proceed in order.

Ordinarily, a question of personal privilege may not be based upon language uttered in debate, the proper course being the timely demand that words be taken down under Rule XIV. 81–1, Mar. 16, 1949, pp 2651, 2652; 80–1, Mar. 20, 1947, p 2314.

§ 27. — Procedure in the Committee of the Whole

A point of order may be raised against the use of disorderly language during debate in the Committee of the Whole. The Chairman of the Committee of the Whole may himself respond to the point of order by admonishing the offending Member to proceed in order. 99–2, Aug. 12, 1986, pp 21078, 21079.

The use of disorderly language in the Committee is also subject to a demand that the words be taken down and reported to the House for a ruling by the Speaker. 8 Cannon § 2539. The Chairman does not rule on whether the words taken down are out of order. 8 Cannon §§ 2533, 2540. Nor is there any debate in the Committee of the Whole as to the propriety of the words used. 8 Cannon § 2538. The Committee rises automatically (8 Cannon §§ 2533, 2538, 2539) and reports the words to the House (2 Hinds §§ 1257–1259, 1348). The business of the Committee is suspended until the words objected to are reported to the House. 93–1, Dec. 13, 1973, pp 41270, 41271; 95–2, Feb. 8, 1978, p 2832; 96–1, June 12, 1979, p 14461.

Forms

CHAIRMAN: Mr. Speaker, the Committee of the Whole House [on the state of the Union] having under consideration the bill H.R. ____, certain words used in debate were objected to and on request were taken down and read at the Clerk's desk, and I herewith report the same to the House.

SPEAKER (after announcing report of Chairman): The Clerk will read the words reported from the committee.

All of the words objected to in Committee should be reported to the House. The Speaker can pass only on the words as reported; a demand that additional words uttered in Committee be reported is not in order in the House. 89–1, July 27, 1965, p 18444.

After the Speaker rules on the words objected to and the House has disposed of any disciplinary proceedings, the Committee resumes its sitting without motion. 8 Cannon §§ 2539, 2541; *Manual* § 761.

§ 28. — Taking Down Words

The taking down of words objected to in debate was a practice of the House even before the procedure became part of its formal rules in 1837. Rule XIV clause 5. *Manual* § 761. The words taken down may consist of a single phrase (82–1, July 26, 1951, p 8968) or an entire colloquy between two Members (79–2, Feb. 12, 1946, p 1241). The demand should indicate the words excepted to and the identity of the Member who uttered them. *Manual* § 761. The objecting Member may indicate briefly the basis for his demand, such as impugning the motives of a colleague; but the Member making the demand may not at that time debate the grounds for a finding that the words are disorderly. 82–1, July 26, 1951, p 8968.

Ordinarily, debate on or interpretation of the words objected to is not in order pending a ruling on them by the Speaker. 87–2, Mar. 19, 1962, p 4458. Although words objected to in debate may be withdrawn pursuant to a unanimous-consent request (§ 30, infra), no debate is in order pending such a request. 95–2, Aug. 2, 1978, p 23945. However, the offending Member may by unanimous consent (or on motion by another Member) be permitted to explain his words. 92–1, Nov. 10, 1971, p 40442.

While a demand that words be taken down is pending, the Speaker may refuse to entertain a parliamentary inquiry (88–1, Oct. 31, 1963, p 20742) or a unanimous-consent request that a Member be allowed to proceed for one minute (88–2, Jan. 21, 1964, p 756).

Form

MEMBER: Mr. Speaker (or Mr. Chairman), I rise to a point of order, and ask that the gentleman's words be taken down.

CHAIR: The gentleman will indicate the words objected to.

MEMBER: I demand that the words _____, uttered by the gentleman from _____, be taken down.

CHAIR: The Clerk will report the words indicated by the gentleman.

Timeliness of Demand

A demand that words be taken down is in order only if made in a timely manner under Rule XIV (*Manual* § 761). The demand should be made immediately after the words are uttered. 88–1, Oct. 31, 1963, p 20742. Where debate has intervened, the demand comes too late (91–1, Sept. 4, 1969, p 24372; 94–2, Apr. 29, 1976, p 11981) unless the objecting Member was on his feet seeking recognition at the proper time. 8 Cannon § 2528.

See also 97–1, May 5, 1981, p 8496; 98–2, May 23, 1984, p 13941. The Chair's determination as to whether a Member's point of order constitutes a demand that those words be ''taken down,'' is not such intervening debate or business as to render the demand untimely. 98–2, Oct. 2, 1984, p 28522. If a point of order or demand that words be taken down is not made immediately after the use of the offending words, the Chair need not subsequently respond to a parliamentary inquiry as to whether the particular words used were a breach of order. 99–2, Mar. 13, 1986, p 4633.

Taking Down Words Read From Papers

Papers read during debate are subject to a timely demand that words be ''taken down'' as an unparliamentary reference to other sitting Members, but the demand must be made before subsequent reading intervenes. 99–1, Feb. 25, 1985, pp 3345–47. That certain words may already have been published elsewhere does not make them admissible in debate, and words not admissible in debate may not be inserted for the Record. 102–2, Oct. 2, 1992, p ____.

Withdrawal of Demand

A demand in the House or in the Committee of the Whole that words be taken down may be withdrawn by the Member making the demand, and unanimous consent is not required. 88–2, Feb. 10, 1964, p 2780; 92–1, Nov. 10, 1971, p 40470; 95–2, Aug. 3, 1978, p 24238.

§ 29. — Withdrawal or Modification of Words

Generally; In the House

Words objected to in debate in the House may be withdrawn or modified by unanimous consent. 8 Cannon §§ 2543, 2544; 88–2, May 11, 1964, p 10448. Such withdrawal by consent is in order pending the demand that the words be taken down. 102–2, Oct. 3, 1992, p ____. In 1990, a reference to ''the best Congress money can buy'' and to the Members as ''political prostitutes'' was withdrawn by unanimous consent. 101–2, Oct. 12, 1990, p ____. Even after a Member's words have been taken down on demand and read to the House, the Speaker may recognize the Member who made the statement to ask unanimous consent to withdraw or modify the words. 87–2, June 5, 1962, p 9739; 95–1, Mar. 2, 1977, p 5937; 95–2, July 13, 1978, p 20715.

Pending a demand that words spoken in debate be taken down and ruled unparliamentary, the Chair may inquire whether the Member whose remarks are challenged wishes to request unanimous consent to modify his remarks before directing the Clerk to read them. 97–2, Dec. 8, 1982, p

29466. However the withdrawal of unparliamentary language may be made even after the Speaker has ruled the language out of order or even recognized another Member on a motion to strike the words from the Record. 8 Cannon § 2539.

The Speaker does not rule retrospectively on the propriety of words withdrawn by unanimous consent. 102–2, Oct. 3, 1992, p ____.

In the Committee of the Whole

A Member may withdraw or modify words objected to in Committee of the Whole by unanimous consent. 8 Cannon §§ 2528, 2538. 88–1, Aug. 1, 1963, p 13865; 88–2, June 10, 1964, pp 13254, 13275. In one instance, two Members demanded that each other's words be taken down and then, by unanimous consent, withdrew their remarks in the Committee of the Whole before they were reported to the House. 94–2, Apr. 29, 1976, p 11882.

Deletions From the Record

Adopted in 1995, clause 9 of Rule XIV mandates that the CONGRESSIONAL RECORD be a ''substantially verbatim'' account of debate, and permits the deletion of unparliamentary remarks only by House order. This clause establishes a standard of conduct within the meaning of that provision of the rules giving rise to the investigative jurisdiction of the Committee on Standards of Official Conduct. Clause 9(a)–(c).

§ 30. — Permission to Explain

Ordinarily, a Member whose words are taken down must take his seat and may not explain his remarks pending a ruling by the Speaker. 87–1, Mar. 24, 1961, p 4780. However, the rules specifically provide for a motion to allow the Member to explain, which motion must be made by another Member. Rule XIV clause 4 (*Manual* § 760). Moreover, the Speaker has the discretion to request the Member called to order, before ruling on the words, to make a brief explanation of his remarks. 76–3, Oct. 9, 1940, p 13477.

§ 31. — Speaker's Ruling

The Speaker (or Speaker pro tempore) has the sole power to rule whether words objected to constitute a breach of order in debate. 2 Hinds § 1249; 5 Hinds §§ 5163–5169. This determination is made by the Speaker after the words have been taken down (whether in the House or in the Committee of the Whole) and have been reported by the Clerk. The question

of whether words taken down violate the rules is for the Speaker to decide and is not debatable. 80–2, Jan. 15, 1948, p 205.

The Speaker's ruling on a question of order has been appealed in the House in numerous instances, the Speaker generally being sustained. 5 Hinds §§ 5157, 5173, 5178, 5194, 5196, 5198, 5199. Such an appeal is subject to the motion to table. 104–1, Jan. 18, 1995, p ____. Also, the House may, by voting on a proper motion, dictate the consequences of that ruling by imposing disciplinary action or by allowing the Member to proceed in debate.

The Speaker in ruling on the words objected to weighs the importance of freedom in debate against the need to maintain the order and dignity of the House. 5 Hinds § 5163. The Speaker considers the meaning of the words as well as the context in which they were used. 74–1, July 23, 1935, p 11699. The Speaker may put questions to the offending Member about the words (90–1, Apr. 5, 1967, p 8411) and may consult dictionaries to determine the meaning of certain words or terms (74–1, July 16, 1935, p 11256).

§ 32. — Discipline; Post-ruling Motions

Generally

Censure or other disciplinary action is a matter for the House and not the Chair to decide. 79–1, Feb. 22, 1945, p 1371. However, no House action is in order until the Chair has ruled on the words objected to. 72–1, May 13, 1932, p 10135. If the words used are ruled to be unparliamentary, and if such words have not been withdrawn, the House may entertain certain motions enabling it to dispose of the breach of order.

Striking Words From Record

Under modern practice, words ruled out of order are normally stricken from the Record by unanimous consent initiated by the Chair. 101–2, May 10, 1990, p 9992. If there is an objection, a motion to strike or expunge the words from the Record is in order. 8 Cannon §§ 2538, 2539; *Manual* § 760. A motion to expunge is in order even though the House by vote has authorized the Member to proceed. 73–1, June 7, 1933, pp 5203–05. The motion, which is debatable within narrow limits under the hour rule (80–1, June 12, 1947, p 6895), is not in order until the Chair has decided that the words are out of order. 71–1, June 14, 1929, p 2924. The motion is not in order in the Committee of the Whole. 77–1, Feb. 18, 1941, p 1126.

Proceeding in Order

After a Member's words have been ruled out of order, the Member may be permitted to proceed in order either by unanimous consent (87–1, Mar.

24, 1961, p 4780) or by motion. It is the practice to test the opinion of the House by a motion ''that the gentleman be allowed to proceed in order.'' 5 Hinds §§ 5188, 5189; 8 Cannon § 2534; 101–2, May 10, 1990, p ____. This motion may be stated on the initiative of the Chair. It is debatable within narrow limits of relevance under the hour rule, and is subject to the motion to lay on the table. 102–1, Oct. 8, 1991, p ____; 104–1, Mar. 29, 1995, p ____.

The motion is privileged for consideration in the House. 73–1, June 7, 1933, pp 5203–05. A motion to strike the objectionable words also generally precedes a proposition to permit a Member to proceed in order. 87–1, Mar. 24, 1961, p 4780.

E. Critical References to the House, Committees, or Members

§ 33. In General; Criticism of the House

Generally

In early Congresses it was held not in order to ''cast reflections'' on the House or its membership, present or past. 5 Hinds §§ 5132–5138. Today, in the interests of free and full debate in conducting legislative deliberations, Members are permitted to voice critical opinions of Congress, of the House, and of the political parties. 82–1, July 26, 1951, p 8969. Statements that are critical of Congress or a portion of its membership will not be ruled out of order for that reason alone. Thus, a statement in debate claiming that the campaign expenses of Members were paid by certain interest groups has been held to be in order. 76–1, Mar. 16, 1939, p 2883.

However, such criticism is subject to the rules and settled practices of the House that require courtesy and decorum in debate. *Jefferson's Manual* states that no one is permitted to use ''indecent language'' in referring to the proceedings of the House. *Manual* § 360. The language used must not be offensive in itself. 5 Hinds § 5135. And the words must be stated in such a way as to avoid personal criticism of an individual Member. (§ 37, infra.) Words impeaching the loyalty of a portion of the membership have also been ruled out. 5 Hinds § 5139.

Ruled In Order

Set out below are precedents in which criticism in debate was held parliamentary or in order as not referring to any particular Member:

- A question whether it was a parliamentary inquiry to ask that a bill be printed in ''words of one syllable so that [Members of the opposing party] can understand it.'' 75–3, Mar. 31, 1938, p 4484.
- A statement that a Member was leading his party in a policy of opportunism. 77–1, Feb. 8, 1941, p 796.
- A statement referring to ''irresponsible actions by members of the President's own party.'' 85–1, Mar. 27, 1957, p 4557.
- ''[Y]ou have your definition of consistency. My definition is that consistency is a virtue of small minds.'' 87–2, Apr. 11, 1962, p 6374.
- A reference to Members as having praised a foreign dictator in prior debate. 98–2, Apr. 12, 1984, p 9480.
- Words characterizing unnamed Members as taking ''potshots'' and as lacking judgment. 99–2, Mar. 18, 1986, p 5201.
- A reference to the consideration of a bill under procedures representing ''a classic example of duplicity.'' 100–2, Apr. 19, 1988, pp 7330, 7335–39.

Ruled Out or Stricken

Set out below are precedents in which words in debate referring to the House or to the membership in general terms were ruled out of order or stricken from the Record.

- ''Talk not to me of vindicating your insulted dignity. . . . You have no dignity to vindicate.'' 5 Hinds § 5132.
- ''[T]he proceedings of the House had been such as not only to degrade it as a body, but also to degrade the country.'' 5 Hinds § 5133.
- A statement declaring the opinions and decisions of the House ''damnable heresies.'' 5 Hinds § 5135.
- A reference to ''[T]he right of the minority to stay indefinitely the right of majority to legislate is as disgraceful, as dishonorable. . . .'' 5 Hinds § 5136.
- ''Drunken Members have reeled about the aisles—a disgrace to the Republic. Drunken speakers have debated grave issues on the floor. . . .'' 5 Hinds § 5186.
- A statement referring to members of the Republican Conference as avoiding an issue and describing lynching as a ''proper means of justice.'' 82–1, July 26, 1951, p 8969.

To show the distinction between words that are permissible and language that may be ruled out, illustrations in this article are drawn from debates from earlier as well as recent Congresses. However, precedents from earlier eras must be evaluated in their historical and cultural context; wheth-

er a word or expression is to be ruled out of order depends on its current meaning and usage. See § 38, infra.

§ 34. Criticism of Committees

A Member in debate may express general criticism of the actions of a committee, as by alleging an abuse of its powers. 81–1, Jan. 17, 1949, p 428. Criticisms of committee procedure are also permitted. 76–3, May 6, 1940, p 5628. But a Member may not in debate impugn the personal motives of a committee or its members (77–1, Feb. 11, 1941, p 894), nor may he make unparliamentary claims of unlawful activity (79–2, Apr. 16, 1946, p 3761). Debate may not include critical characterizations of members of the Committee on Standards of Official Conduct who have investigated a Member's conduct. 102–2, Apr. 1, 1992, p ____.

Ruled In Order

- A reference to the action of a committee as ''more or less pusillanimous.'' 76–1, May 31, 1939, p 6445.
- An editorial read by a Member charging a committee with ''pigeon-holing'' certain legislation. 76–3, May 6, 1940, p 5628.
- ''Did the gentleman's committee also find paid agents of Hitler on the congressional payroll?'' 78–1, Mar. 31, 1943, p 2787.
- A reference to a committee investigation of ''the recent wave of policy lynch murder in Mississippi.'' 80–2, Mar. 9, 1948, p 2408.
- A statement that a Member ''has been the victim of the abusive, vicious, and irresponsible use of the power of a congressional committee.'' 81–1, Jan. 17, 1949, p 428.

Ruled Out of Order

- A statement that certain fascist organizations exercised extensive influence on a special House committee. 77–1, Feb. 11, 1941, p 894.
- Language referring to ''lies and half-truths'' of a House committee report. 80–1, June 16, 1947, p 7065.
- ''I cannot respect the actions or even the sincerity of some of the committee members.'' 79–2, June 26, 1946, p 7596.
- A reference to the Committee on Un-American Activities as ''the Un-American Committee.'' 80–1, Jan. 12, 1947, p 6895.

§ 35. Criticism of Speaker

The proscription of Rule XIV clause 1 that Members confine themselves to the question under debate, ''avoiding personality,'' has been applied to critical references to the Speaker's personal conduct. 104–1, Jan. 19, 1995, p ____. It is not in order in debate to refer invidiously to the Speaker (8 Cannon § 2531); nor is it in order to speak disrespectfully of him

(2 Hinds § 1248; 104–1, Jan. 19, 1995, p ____), as by asserting that he is ''kowtowing'' to persons who would desecrate the U.S. flag. 101–2, June 20, 1990, p ____. It is not in order in debate to refer in a personally critical manner to his political tactics. 97–1, June 25, 1981, p 14056. Nor is it in order to arraign his personal conduct. 104–1, Jan. 19, 1995, p ____. Any complaint as to the conduct of the Speaker should be presented directly for the action of the House and not by way of debate on other matters, such as the approval of the Journal. 5 Hinds § 5188. 104–1, Jan. 19, 1995, p ____. Personal criticisms of the Speaker can be challenged after debate has intervened. 2 Hinds § 1248.

It is against order in debate for a Member to charge that the Speaker, while presiding, committed a dishonest act or that the Speaker repudiated and ignored the rules of the House. 73–2, May 31, 1934, p 10167. In one instance, however, an assertion of a personal belief that a sufficient number had been standing to demand a recorded vote was held parliamentary as not necessarily charging the Chair with disregard of the rules, in the context of those words alone. 99–1, July 11, 1985, pp 18545, 18550.

If words impugning the Speaker are uttered, the Speaker may choose not to rule on the words himself but may appoint a Member to occupy the Chair and to deliver a decision. 74–1, Feb. 7, 1935, pp 1680–82.

§ 36. Criticism of Legislative Actions or Proposals

Generally

Although remarks in debate may not include personal attacks against a Member or an identifiable group of Members, they may address political motivations for legislative positions. 104–1, Jan. 24, 1995, p ____; 104–1, Mar. 8, 1995, p ____. Statements in debate, although critical of House action or of the legislation at issue, may be ruled in order if they do not improperly reflect on the House or a particular Member. 88–2, Jan. 21, 1964, p 756. Harsh words may be used to criticize a bill unless they fail to ''avoid personality'' as mandated by Rule XIV (*Manual* § 749). 79–2, Jan. 31, 1946, p 675. While it may be appropriate in debate to characterize the effect of an amendment as deceptive or hypocritical, to characterize the motivation of a Member in offering an amendment with those terms is not in order. 96–1, June 12, 1979, p 14461. In one instance, the statement in debate that ''it is only demagoguery or racism which impel such an amendment'' was held by the Speaker to be unparliamentary as impugning the motives of the Member offering the amendment. 93–1, Dec. 13, 1973, pp 41270, 41271.

Held in Order

Criticisms of legislative actions or proposals that have been held in order in debate include:

- A statement that ''sinister influences'' were working in the interest of certain unnamed Members opposing a bill. 74–2, Mar. 23, 1936, p 4235.
- A statement accusing unnamed colleagues who opposed a measure of talking ''loosely and recklessly with the truth.'' 77–1, May 6, 1941, p 3670.
- A statement accusing unnamed Members of attempting to ''cut off debate'' on important legislation in order to attend an engagement at a hotel. 78–2, Feb. 3, 1944, pp 1216 *et seq.*
- A statement that all lawyers know ''that the adoption of this language neither adds to nor takes from a single item of the substance of this bill.'' 79–2, Feb. 20, 1946, p 1500.
- A reference accusing unnamed opponents of a proposal of ''blind,'' ''slavish,'' and ''shameful'' opposition. 81–2, Feb. 6, 1950, p 1513.
- A statement referring to an amendment that: ''where I come from . . . the people . . . do not like slippery, snide, and sharp practices.'' 82–1, July 26, 1951, p 8968.
- A statement referring to a tactic of ''withholding'' votes until it could be determined whether they would be necessary on the pending question. 89–1, July 26, 1965, p 18441.
- A statement that a Member ''has already admitted his amendment does not make sense, and he will take any alternative that is offered.'' 88–2, Jan. 21, 1964, p 756.

§ 37. Critical References to Members

Jefferson stressed the importance of preserving ''order, decency and regularity . . . in a dignified public body.'' *Manual* § 285. And the House rules provide that a Member must confine himself to the question under debate, ''avoiding personality.'' Rule XIV (*Manual* § 749). See 102–2, Oct. 3, 1992, p ____. The Chair may interrupt a Member engaging in ''personalities'' with respect to a fellow Member just as he would with respect to improper references to the Senate or the President. 104–1, Jan. 4, 1995, p ____. However, under modern practice the Chair normally awaits a point of order from the floor with respect to references to other Members.

The Speaker will hold language unparliamentary where it improperly reflects on another Member under Rule XIV. 93–2, Aug. 21, 1974, pp 29652, 29653. A Member may not in debate impugn the personal motives of another Member (§ 39, infra), charge him with falsehood or deception (§ 40, infra), or denigrate his intelligence (§ 41, infra). Nor is it in order in debate to refer in a personally critical manner to the political tactics of a Member. 97–1, June 25, 1981, p 14056. The truth of allegations involving unethical

behavior of a Member is not a defense to a point of order that the remarks are unparliamentary as explicitly or by innuendo engaging in personalities. 104–1, Jan. 18, 1995, p ____. On the other hand, it is recognized that free and full debate is necessary in conducting legislative business, and the Members are allowed considerable latitude in criticizing the position, arguments, or contentions of another Member. 74–1, July 23, 1935, p 11699.

It is not in order during debate to refer to a particular Member of the House in a derogatory fashion, even though that Member is not named, and the Chair will intervene to prevent improper reference where it is evident that a particular Member is being described. 99–1, Feb. 25, 1985, pp 3345–47. In one instance, after a Member had expressed an absence of ''good faith on the other side,'' he was granted unanimous consent to withdraw any reference to any individual Member. 100–1, June 18, 1987, pp 16761–63.

Members should refrain from references in debate to the official conduct of other Members where such conduct is not under consideration in the House by way of a report of the Committee on Standards of Official Conduct or as a question of the privilege of the House. 101–2, July 24, 1990, p ____; 102–2, Mar. 19, 1992, p ____.

The rule requiring Members to avoid ''personality'' during debate prohibits references in debate to newspaper accounts used in support of a Member's personal criticism of a sitting Member in a way which would be unparliamentary if uttered on the floor as the Member's own words. 99–1, Feb. 25, 1985, pp 3345–47.

It is not unparliamentary to describe in debate the effect which a Member's remarks may have, especially where that description includes a disclaimer disavowing any intention to impugn a Member's motives. 98–1, July 28, 1983, p 21462.

Ruled In Order During Debate

- A statement that if a certain Member sponsors a measure it would receive only one or two votes. 73–2, June 12, 1934, p 11177.
- A reference to another Member's remarks as ''yapping.'' 73–2, June 16, 1934, p 12114.
- A statement accusing a Member of trying ''to becloud'' an issue. 82–1, Sept. 25, 1951, p 12074.
- A reference in debate to another Member as not representing a certain class of people in his state. 83–1, Apr. 28, 1953, p 4126.
- A reference to another Member's statement as ''intemperate.'' 88–1, Aug. 1, 1963, p 13865.
- A description of a Member's statement that ''this is an example of the spurious reasoning that [an interest group] has with regard to their opposition to this bill.'' 87–2, Mar. 19, 1962, p 4458.

- A Member's statement that another Member's demand that words be taken down during a special-order speech was ''an unfair stealing of time.'' 99–1, Feb. 27, 1985, pp 3899, 3900.
- A Member's assertion that ''even though that may not be the intention, I think [certain statements] have the tendency to try to assassinate the character of the person making the statement rather than to effectively assassinate the argument.'' 98–1, July 28, 1983, p 21461.

Ruled Out of Order

- A reference to the remarks of another Member as ''malignant shafts'' or as a ''base insinuation.'' 5 Hinds § 5162.
- A reference to another Member as a ''snooper.'' 74–1, July 16, 1935, p 11256.
- ''The gentleman took the floor in his self-appointed role as spokesman for the committee [and] referred to me in my absence in a disgraceful and unparliamentary manner.'' 79–2, May 16, 1946, p 5106.
- Referring to another Member as a demagogue (78–1, May 4, 1943, p 3915) or as a ''president of the Demogog Club'' (76–3, Feb. 15, 1940, p 1529).
- ''[D]on't you start comparing anybody's record, because I have got yours . . . with . . . the FBI.'' 79–1, Apr. 30, 1945, p 3992.
- A reference to another Member as a ''pinko.'' 88–1, Oct. 31, 1988, p 20742.

§ 38. — Use of Colloquialisms; Sarcasm

The Members are allowed considerable latitude in the use of colloquialisms, euphemisms, figures of speech, and even sarcastic comment in debate. In one instance, for example, the statement in debate ''you are going to skin us'' was held merely a colloquialism which did not reflect on any Member and was in order. 77–1, Feb. 18, 1941, p 1126. In another instance, a Member used the word ''crime'' in referring to another Member, but the Chair ruled the term in order, finding that in the context of the debate, the term was being used as a synonym or figure of speech meaning ''wrong.'' 74–1, July 23, 1935, p 11699. A statement in debate ''[h]ere is the answer, if the gentleman can understand English'' has been held in order. 74–2, Mar. 9, 1936, p 3465.

The use in debate of colloquial expressions, figures of speech, or sarcasm is governed by their current meaning and by the context in which they are uttered. 5 Hinds §§ 5165, 5167. An unparliamentary reference to another Member in debate is subject to a point of order even if it is veiled as a satiric compliment. 5 Hinds § 5168. Even the tone and mannerisms of a Member may be taken into account by the Chair in determining whether the criticism voiced is personally offensive to another Member. 98–1, May 26, 1983, p 14048.

Ruled Out

- A reference to another Member ''whose name is synonomous [*sic*] with falsehood . . . who is the apologist of thieves; who is such a prodigy of vice and meannesses that to describe him would sicken imagination and exhaust invective.'' 2 Hinds § 1251.
- ''. . . [N]obody but a gambler or cutthroat would have thought of tacking such a thing as that to such a bill as this.'' 2 Hinds § 1258.
- A reference to another Member as possessing ''a characteristic skill and cunning,'' for which he was ''unrivaled and preeminent in the highly civilized, polished, and refined State which honored the House with his presence here.'' 5 Hinds § 5167.
- ''The devotion of the gentleman . . . to the truth is so notorious that I shall not reply.'' 8 Cannon § 2545.
- A reference to another Member as a ''stool pigeon.'' 74–1, July 16, 1935, p 11256.
- References to a Member as having a ''hand like a ham,'' grasping a microphone until it ''groaned from mad torture,'' and striding the House floor ''like a wild man.'' 76–1, Mar. 16, 1939, p 2871.
- A reference to another Member's proceeding in a ''cheap, sneaky, sly way.'' 93–2, Aug. 21, 1974, p 29652.

§ 39. — Impugning Motives

In the early practice of the House, the Speaker intervened in debate to prevent even the mildest imputation on the motives of a Member. 5 Hinds § 5161. It is still the rule that Members may not in debate impugn the personal motives of other named Members in the performance of their legislative duties. 99–1, Mar. 19, 1985, pp 5532–37. An opinion on the general motives of the House or a political party in adopting or rejecting a proposition may be expressed (§ 36, supra). References to political motivation for legislative actions may be in order. 104–1, Jan. 24, 1995, p ____; 104–1, Mar. 8, 1995, p ____. But an assertion that a Member's use of the legislative process is motivated by personal gain (5 Hinds § 5149) or by ''the prospect of a junketing trip'' (8 Cannon § 2546) is not in order. Merely to question the sincerity of a Member has been held to impugn his motives. 5 Hinds § 5148.

Members should refrain from references in debate to the motivations of Members who file complaints before the Committee on Standards of Official Conduct. 101–1, Mar. 22, 1989, p 5130; 101–1, May 2, 1989, p 7735; 101–1, Nov. 3, 1989, p ____.

Ruled Out of Order

In the precedents below language was objected to in debate as impugning a Member's motives and was ruled out of order.

- Charging another Member, in his capacity as custodian of certain public money, with ''[m]aking a parade of his charity, he has been gorging himself and speculating with this money.'' 5 Hinds § 5152.
- To characterize the motivation of a Member in offering an amendment as deceptive and hypocritical. 96–1, June 12, 1979, p 14461.
- An observation that a Member stood in the well before an empty House and challenged the Americanism of other Members, ''and it is the lowest thing that I have ever seen in my 32 years in Congress.'' 98–2, May 15, 1984, pp 12201, 12202.
- To characterize another Member as ''speaking out of both sides of his mouth.'' 99–1, Mar. 19, 1985, p 5532.

§ 40. — Charging Falsehood or Deception

During debate on the floor, an assertion by one Member may be declared untrue by another (5 Hinds § 5159); yet in so doing an accusation of intentional misrepresentation must not be implied. 5 Hinds §§ 5157, 5189; 8 Cannon § 2542; *Manual* § 363. Any term or language implying a deliberate misstatement of the truth, for whatever motive, is unparliamentary, including allegations of lying, slander, or hypocrisy. Of course, a Member may question the truthfulness of a Member's assertion without implying a deliberate misstatement. A Member's expression of disbelief may be construed as meaning that the Member referred to was merely mistaken in his conclusions. 74–1, July 2, 1935, p 10670. In one instance, a Member's statement in referring to another Member that, ''That is not true, and he knows it,'' was held in order, the Speaker observing that the words were not uttered in an offensive tone. 5 Hinds § 5158.

A Member may refer to falsehoods in the media without violating the rules of the House, even though his remarks are made during debate with another Member. 79–2, Feb. 12, 1946, p 1240.

Held In Order in Debate

- A Member's statement that he did ''not believe a word that [another Member] has said.'' 74–1, July 2, 1935, p 10670.
- A statement referring to another Member ''when he comes here to defend some slime-monger who goes on the radio and lies about me. . . .'' 79–2, Feb. 12, 1946, p 1240.
- ''Let us be sincere and honest about this thing.'' 78–2, Jan. 21, 1944, p 560.

Held Out of Order

- A Member's declaration that the words of another Member were ''a base lie.'' 2 Hinds § 1249.
- The use of the words ''grossly false,'' as applied to statements made by another Member in a pamphlet published by him during a recess of Congress. 5 Hinds § 5157.
- A statement by a Member ''I cannot believe that the gentleman . . . is sincere in what he has just said.'' 77–2, Nov. 2, 1942, p 8702.
- A statement that the remarks of a Member were ''false and slanderous.'' 78–1, Dec. 20, 1943, p 10922.
- A statement in referring to another Member that ''pretexts are never wanting when hypocrisy wishes to add malice to falsehood or cowardice. . . .'' 79–1, Oct. 25, 1945, p 10044.
- ''I cannot respect the actions or even the sincerity of some of the committee members.'' 79–2, June 26, 1946, p 7596.
- Language read in the House which repudiated ''lies and half-truths'' in a House committee report. 80–1, June 16, 1947, p 7065.
- Use of the word ''canard''—meaning falsehood—in referring to the statement of another Member. 81–1, May 11, 1949, p 6042.
- Words accusing another Member of hypocrisy. 96–1, July 24, 1979, p 20380.

§ 41. — Lack of Intelligence or Knowledge

A Member in debate may be critical of the understanding or knowledge of other Members or groups of Members in relation to pending bills or amendments. However, such remarks should not denigrate the intelligence of another Member because this would be personally critical and offensive. 88–2, June 10, 1964, p 13254; 96–2, July 2, 1980, p 18361.

§ 42. — References to Race or to Racial Prejudice

Gratuitous references in debate to the race of another Member are not in order. A reference to ''the Jewish gentleman from New York,'' for example, has been ruled out by the Speaker. 79–1, Oct. 24, 1945, p 10032.

It is not in order in debate to accuse a Member of bigotry or racism. Remarks characterizing the motives behind certain legislation as ''demagogic and racist'' (93–1, Dec. 13, 1973, p 41271) have been ruled out of order, as has a reference to another Member as having reached ''bigoted'' conclusions (90–1, Aug. 14, 1967, p 22443).

§ 43. — Charges Relating to Loyalty or Patriotism

Unless the subject is relevant to disciplinary proceedings brought by the House against a Member, remarks in debate impugning the patriotism or

loyalty of a Member are not in order. 101–2, June 20, 1990, p ____. Words impeaching the loyalty of a portion of the membership have also been ruled out. 5 Hinds § 5139. However, if such language is directed at the House or at its membership in general, the remarks may not be improper (see also § 33, supra).

Ruled In Order in Debate

- A statement referring to all opponents of the Committee on Un-American Activities as communist enemies. 79–2, Feb. 27, 1946, p 1724.
- A statement that another Member had been published in a newspaper ''dedicated to the destruction of this Government.'' 79–2, Mar. 28, 1946, p 2751.
- A statement referring to (unnamed) Members who give ''aid and comfort'' to enemies and traitors. 80–1, Nov. 24, 1947, p 10791.
- A statement referring to ''people'' who would rip down the American flag and replace it with the Soviet flag. 80–2, Mar. 25, 1948, p 3533.
- A statement characterizing the Committee of the Whole as an agency of the Soviet Union. 80–2, June 4, 1948, p 7171.
- A statement accusing another Member of past opposition to ''every bill necessary for the defense of our country.'' 81–1, Mar. 16, 1949, p 2651.

Ruled Out of Order

- A statement that insertions in the Record by another Member were taken from ''Nazi elements.'' 76–3, June 14, 1940, p 8269.
- A statement by a Member that internal fascist organizations exercised extensive influence over a special House committee. 77–1, Feb. 11, 1941, p 894.
- A statement, in response to critical comments by another Member, that ''I am not going to sit here and listen to these communistic attacks made on me.'' 79–2, Feb. 12, 1946, p 1241.
- ''There is nothing more subversive than the kind of red baiting tactics [of] the gentleman from _____.'' 79–2, Apr. 2, 1946, p 2957.
- A statement referring to another Member as attempting to undermine the government. 79–2, May 14, 1946, p 5028.
- A reference to the Committee on Un-American Activities as ''the Un-American Committee.'' 80–1, June 12, 1947, p 6895.
- A reference to certain Members as ''apostles of doom'' whose utterances would give ''great aid and comfort'' to the Soviet Union. 82–1, Aug. 17, 1951, p 10250.
- A reference to another Member as ''kowtowing'' to persons who would desecrate the flag. 101–2, June 20, 1990, p ____.

F. Duration of Debate in House

§ 44. In General

Limitations on Debate Time

Prior to 1841, there was no limit on the time which a Member might occupy when once in possession of the floor. 5 Hinds § 5221. Under the modern practice, the duration of debate in the House is invariably limited. Such limitations are imposed pursuant to the standing rules of the House, special rules from the Committee on Rules, and unanimous-consent agreements adopted by the House. Certain types of legislative propositions, such as concurrent resolutions on the budget, are subject to statutory time limitations. § 48, infra.

On major bills, a special rule typically specifies the length of time for general debate—usually a number of hours—and identifies the Members who are to control that time. § 48, infra. Such time limits may also be imposed pursuant to a unanimous-consent agreement. 99–1, Apr. 30, 1985, p 9801. If a bill or resolution comes to the House floor without such a time limit, the ''hour rule'' (Rule XIV clause 2) applies to limit the time for general debate. 91–1, Feb. 5, 1969, p 2835. A Member calling up a measure in the House pursuant to a unanimous-consent request or special rule which does not specify debate time controls one hour of debate thereon. 95–1, Nov. 3, 1977, pp 36970, 36971.

Other limitations on the duration of debate are found in those standing rules of the House that authorize specific motions, such as the motion to suspend the rules. Debate on suspension motions is limited to 40 minutes. Rule XXVII clause 2. *Manual* § 907. (Forty-minute debate, see § 46, infra.)

Discretion of Chair as Affecting Debate Time

On certain incidental questions of order, the duration of debate is within the discretion of the Chair. This practice is followed with respect to:

- Debate on points of order. 5 Hinds §§ 6919, 6920; 8 Cannon §§ 3446–3448; 82–1, Apr. 13, 1951, p 3909.
- Debate following recognition for a reservation of objection to a unanimous-consent request. See POINTS OF ORDER; PARLIAMENTARY INQUIRIES.
- Debate under the five-minute rule on an appeal in the Committee of the Whole. 8 Cannon § 2347.

Timekeeping

The Chair monitors the time of Members who take the floor in debate and announces when a Member's time has expired under the rules. See, for example, 88–1, June 11, 1963, p 10633. Extensions of time, see § 48, infra.

§ 45. The Hour Rule

The ''hour rule'' of the House (Rule XIV clause 2) limits the amount of time that a Member may occupy in debate on a pending question to 60 minutes. *Manual* § 758. A Member may not be recognized for more than one hour. Although the House may by special rule or unanimous consent extend the time for debate on a bill beyond one hour, and divide that time between two or more Members, no Member may address the House for more than one hour, even by unanimous consent. 91–1, June 11, 1969, p 15440. See also § 48, infra.

The practice under the hour rule often serves to limit the total debate time on the measure itself to one hour. This is because, at the conclusion of the controlling Member's hour, ordering the previous question cuts off further debate. *Manual* § 804.

If the Member controlling the hour successfully moves the previous question, all debate is terminated and the measure is voted on by the House. If the House rejects the previous question, the measure is then open to further debate. Recognition passes to an opponent of the measure, who may offer an amendment and be recognized for one hour. See PREVIOUS QUESTION.

The hour rule is one of general applicability; it does not govern total debate time when the House has agreed to a different time frame pursuant to the adoption of a unanimous-consent agreement or a special rule from the Committee on Rules, nor is it applicable where another rule of the House specifies otherwise. The hour rule applies:

- Where a Member rises to a question of the privileges of the House and presents a resolution. 90–2, June 20, 1968, pp 17970–72, 17977.
- To a resolution reported from the Committee on Rules. 88–1, May 14, 1963, pp 8512, 8518–20; 92–2, June 21, 1972, p 21694.
- To a privileged resolution reported from committee. 88–1, Feb. 27, 1963, p 3051.
- To a Member recognized to call up a resolution of inquiry. 82–2, Feb. 20, 1952, pp 1205–07, 1215, 1216; 89–1, Sept. 16, 1965, pp 24030, 24033, 24034.
- To a Member recognized to present impeachment charges. 74–2, Jan. 14, 1936, pp 404, 406.
- When a District of Columbia bill on the House Calendar is called up on District Day under clause 8 Rule XXIV. 87–1, June 12, 1961, p 10068.
- When a private bill is called up in the House by unanimous consent. 88–1, Mar. 12, 1963, p 3993.
- Where a measure not requiring consideration in Committee of the Whole is before the House pursuant to a motion to discharge. 92–1, Nov. 8, 1971, pp 39889, 39892.

- To a motion to refer a vetoed bill. 76–3, Oct. 10, 1940, pp 13522–24.
- To the question of passage of a bill over Presidential veto. 91–2, Jan. 22, 1970, p 750; 91–2, June 25, 1970, pp 21532–53.
- To a motion to reconsider (if debatable). 89–1, Sept. 13, 1965, p 23608; *Manual* § 819.
- To a motion to discharge a committee from further consideration of a resolution disapproving a reorganization plan. 87–1, Aug. 3, 1961, p 14548.
- To a motion to expunge from the Record certain remarks used in debate and ruled out of order. 77–1, Feb. 11, 1941, pp 894, 895, 899; 80–1, June 12, 1947, pp 6895, 6896.
- To a Member recognized on a motion to send a bill to conference under Rule XX clause 1. 91–2, Mar. 3, 1970, pp 5722, 5723.
- To a motion to instruct House managers at a conference. 79–2, May 9, 1946, p 4750; 87–1, Aug. 8, 1961, p 14947.
- Where a Member is recognized to call up a conference report. 86–1, June 23, 1959, p 11599.
- To Senate amendments considered in the House. 86–2, Aug. 30, 1960, pp 18357, 18358.
- On a bill called up on the Corrections Calendar. *Manual* § 745a.

The hour rule applies even prior to the adoption of the rules at the inception of a Congress. Thus, a Member offering a resolution on the seating of a Member-elect is entitled to one hour of debate. 90–1, Jan. 10, 1967, p 14.

§ 46. Ten-minute, Twenty-minute, and Forty-minute Debate

The House rules specify fixed periods of debate time, equally divided between the proponents and opponents, on certain motions and questions.

Ten-minute Debate

The House rules permit 10 minutes of debate time, equally divided, on:

- Amendments offered after closing of general debate in Committee of the Whole. *Manual* § 870.
- Amendments offered after the closing of five-minute debate by the Committee of the Whole if printed as required in the Record and if they are not dilatory. Rule XXIII clause 6. *Manual* § 874.
- Motions to recommit with instructions a bill or joint resolution under Rule XVI clause 4, with the time subject to extension under some circumstances. *Manual* § 782.
- Motions to dispense with the call of the Private Calendar. Rule XXIV clause 6. *Manual* § 893.
- Motions to dispense with Calendar Wednesday business. Rule XXIV clause 7. *Manual* § 897.

Twenty-minute Debate

The House rules permit 20 minutes of debate time on motions to discharge a committee, the time to be equally divided. Rule XXVII clause 3. *Manual* § 908. The right to close such debate is reserved to the proponents of the motion (7 Cannon § 1010a); and the chairman of the committee being discharged, if opposed to the motion, has been recognized to control the 10 minutes in opposition. 91–2, Aug. 10, 1970, p 27999. (If the motion to discharge is successful, and the measure is properly before the House rather than the Committee of the Whole, the Member moving its consideration is recognized in the House under the hour rule. *Manual* § 908.)

Twenty minutes of debate is also permitted where a point of order is raised against a federal mandate under § 425 of Part B, Title IV, of the Congressional Budget Act (*Manual* § 1007) as passed in 1995. Points of order under that Act are disposed of by putting the question of consideration, debatable for 20 minutes—10 by the Member making the point of order, 10 by a Member in opposition.

Forty-minute Debate

The House rules permit 40 minutes of debate time:

- On motions to suspend the rules, the time to be divided between proponents and opponents. Rule XXVII clause 3. *Manual* § 907.
- Following the ordering of the previous question on a debatable proposition on which there has been no debate. Rule XXVII clause 3. *Manual* § 907; 5 Hinds § 6821.
- On motions to reject certain portions of conference reports or Senate amendments objected to as nongermane. Rule XXVIII clause 4. *Manual* § 913b.

Other articles in this work dealing with specific motions and questions should be consulted. See for example, PREVIOUS QUESTION; CONFERENCES BETWEEN THE HOUSES; SUSPENSION OF RULES.

§ 47. Debate in the House as in Committee of the Whole

Debate on a bill being considered in the House as in Committee of the Whole is under the five-minute rule, with no general debate. 89–2, Sept. 28, 1966, p 24080; 90–1, June 26, 1967, pp 17183–86; 90–1, Sept. 27, 1967, pp 26957 *et seq.* Five minutes in favor of and five in opposition to an amendment is permitted. 90–1, Dec. 14, 1967, pp 36535–37. Members may also gain five minutes of debate by offering pro forma amendments (95–1, Nov. 2, 1977, p 36513) and motions to strike the enacting clause (74–2, Mar. 17, 1936, p 3894).

Extensions of time for debate beyond five minutes are generally permitted only by unanimous consent. 91–1, July 28, 1969, p 20850. However, a Member may speak in opposition to a pending amendment and subsequently offer a pro forma amendment and debate that; and a Member who has debated a substantive amendment may thereafter rise in opposition to a pro forma amendment thereto. § 54, infra.

Private Calendar debate in the House as in Committee of the Whole is strictly limited to five minutes in favor of and five in opposition to an amendment; extensions of time under the five-minute rule are not permitted. 90–1, Dec. 14, 1967, pp 36535–37.

§ 48. Limiting or Extending Debate Time

Generally

The House may by unanimous consent or by special rule limit or extend the time for debate on propositions considered in the House. But a motion to extend the time for debate in the House is not in order. 92–2, June 13, 1972, pp 20678, 20681.

By Special Rule

A special rule from the Committee on Rules may limit the debate time that may be devoted to a proposition to be considered in the House. It may specify, for example, that general debate shall not exceed a certain number of hours or days. 73–1, May 2, 1933, p 2693; 93–2, Dec. 19, 1974, p 41419. Similarly, though conference reports are ordinarily considered under the hour rule, a special rule may provide for more extended debate. 94–1, Mar. 26, 1974, p 8916.

By Unanimous Consent

Debate time in the House under the hour rule may be modified by unanimous consent. 99–1, Oct. 11, 1985, p 27361. In one instance, by unanimous consent, debate on a resolution declaring a seat vacant in the House was extended to two hours. 99–1, Apr. 30, 1985, p 9801. In another instance, time for debate on three contempt citations was, by unanimous consent, fixed at three hours—two hours on the first citation and one-half hour on each of the remaining two. 86–2, Aug. 23, 1960, p 17278.

Debate on a privileged resolution in the House is ordinarily under the hour rule, but such debate may be extended beyond one hour by unanimous consent or by rejecting the motion for the previous question. § 49, infra. Thus, the House may agree to a unanimous-consent request to extend the time for the debate in the House on a special rule reported from the Com-

mittee on Rules. 95–1, July 14, 1977, p 22942; 95–1, July 29, 1977, p 25654.

Unanimous-consent agreements extending time may further provide for a division of time between various Members. However, a Member may not address the House for more than one hour on any subject, even by unanimous consent. 91–1, June 11, 1969, p 15440; 94–2, Mar. 9, 1976, p 5906.

Effect of Statutory Time Limitations

Debate time on certain kinds of legislative propositions is limited by statute. *Examples* of such laws are:

- Congressional Budget Act of 1974 (limits debate on concurrent resolutions on the budget to 10 hours; specifies four hours for debate on economic goals and policies; amendments considered under five-minute rule). § 305(a).
- Impoundment Control Act of 1974 (limits debate on rescission bill or impoundment resolution to not more than two hours). § 1017(c).
- Trade Act of 1974 (limits debate on implementing bills and certain resolutions to 20 hours). 19 USC § 2101.
- Pension Reform Act (limits debate on joint resolutions approving certain schedules to not more than 10 hours). § 4006(b)(6). 29 USC § 1306(b).
- Marine Fisheries Conservation Act (limits debate on fishery agreement resolutions to not more than 10 hours). § 203(d)(4). 16 USC § 1823(d).
- Nuclear Waste Policy Act of 1982 (limits debate on certain resolutions of approval to not more than two hours). § 115(e)(4). 42 USC § 10135(e).

Such statutory provisions (compiled in *Manual* § 1013) are enacted as an exercise of the rule-making power of both Houses, with full recognition of either House to change them at any time. In one instance, the Committee of the Whole was considering a resolution disapproving a reorganization plan pursuant to the Reorganization Act of 1949, which limited debate time to 10 hours; the House agreed by unanimous consent to limit debate in the Committee to five hours, and then subsequently consented to limit further debate to 30 minutes. 87–1, July 19, 1961, pp 12905, 12932.

§ 49. Closing Debate

The usual motion for closing debate in the House (as distinguished from the Committee of the Whole) is the motion for the previous question. 5 Hinds § 5456; 8 Cannon § 2662; *Manual* § 805. This motion is also used to close debate in the House *as in* Committee of the Whole. 91–1, July 28, 1969, p 20855. Under the rule authorizing this motion (Rule XVII), the Member controlling debate on a proposition in the House may move the previous question and (if ordered by the House) thereby terminate further

debate. 89–1, Jan. 4, 1965, p 20. However, the House may by unanimous consent vacate the ordering of the previous question in order to extend debate. 86–2, Aug. 26, 1960, p 17869. If the motion is ordered on a debatable proposition, and that proposition has not in fact been debated, then (under another House rule) 40 minutes of debate is permitted. Rule XXVII clause 2. *Manual* § 907. See 5 Hinds § 6821; 8 Cannon § 2689.

Other methods of terminating or precluding debate in the House include the use of the motion to lay on the table and the raising of the question of consideration. For comprehensive discussion, see PREVIOUS QUESTION, LAY ON THE TABLE, and QUESTION OF CONSIDERATION.

§ 50. One-minute and Special-order Speeches; Morning Hour Debates

Generally

The ability of Members to address matters not on the daily legislative agenda is facilitated by allowing ''one-minute speeches'' and special-order speeches.'' Neither procedure is specifically provided for in the standing rules, but their use is permitted by a long-standing custom regarded as beneficial to the democratic processes of the House. 90–2, July 22, 1968, p 22633.

One-minute Speeches

One-minute speeches are normally entertained at the beginning of the legislative day, although in recent practice the Speaker may recognize Members to proceed for one minute after legislative business has been completed. 103–2, Feb. 11, 1994, p ____. Recognition for one-minute speeches is within the discretion of the Chair, and he may decline recognition until a later time or place in the legislative day (*e.g.,* to follow a scheduled recess). 98–2, May 16, 1984, p 12483. Indeed, when the House has a heavy legislative schedule, he sometimes refuses all requests to recognize Members for a one-minute speech. 90–2, July 22, 1968, p 22633; 91–2, June 17, 1970, p 20245.

The evaluation of the time consumed on a one-minute speech is a matter for the Chair and is not subject to challenge on a point of order. 92–2, May 9, 1972, p 16288. He has refused to put to the House unanimous-consent requests for extensions of that time. 92–1, May 6, 1971, p 13724. Moreover, under the Speaker's power of recognition as traditionally exercised prior to legislative business, a Member can be recognized for a one-minute speech only once, and a second unanimous-consent request on that day will not be entertained. 99–1, May 1, 1985, p 9995.

The order of recognition for one-minute speeches prior to legislative business is within the discretion of the Chair and is not subject to challenge on a point of order. 98–1, Nov. 15, 1983, pp 32657, 32658. However, the Chair endeavors to recognize majority and then minority members by allocating time in a nonpartisan manner. 97–2, Aug. 4, 1982, p 19319. In 1984, the Speaker began a new policy requiring the alternation of recognition between majority and minority members in the order in which they seek recognition. 98–2, Aug. 8, 1984, p 22963; 99–1, Jan. 3, 1985, p 420; 103–1, Jan. 5, 1993, p ____.

Morning Hour Debates

Morning hour debates were first initiated on a trial basis in the 103d Congress. The House by unanimous consent agreed that on certain days of the week, the House would convene earlier than the time otherwise established by order of the House solely for the purpose of conducting morning hour debates to be followed by a recess declared by the Speaker. Debate was limited and allocated to each party, with initial and subsequent recognition alternating daily between parties pursuant to lists submitted by the leadership. *Manual* § 753b.

Special-order Speeches

The Chair normally recognizes Members for special orders to address the House at the conclusion of business of the day. The Speaker may reserve the right to return to business. Deschler-Brown Procedure Ch 21 §§ 8.6, 8.7. No Member may be recognized beyond one hour, even by unanimous consent, since under clause 2 Rule XIV a Member may not be recognized for more than one hour of debate on any question. Manual § 758. Furthermore, a Member may not be recognized for two special-order speeches on the same legislative day, even though special orders have been interrupted by legislative business. Deschler-Brown Procedure, Ch 21 § 8.1.

Since the 98th Congress the Speaker has followed announced policies of (1) alternating recognition for special-order speeches between majority and minority members and (2) recognizing for special-order speeches of five minutes or less before longer speeches. *Manual* § 753a. Since Feb. 24, 1994, the Speaker's announced policies for recognition for special-order speeches has been as follows: (1) recognition does not extend beyond midnight; (2) recognition for longer speeches is limited (except on Tuesday) to four hours equally divided between the majority and minority; (3) the first hour for each party is reserved to its respective Leader or his designees; (4) time within each party is allotted in accord with a list submitted to the Chair by the respective Leader; (5) the first recognition within a category alternates

between the parties from day to day, regardless of when requests were granted; (6) Members may not enter requests for five-minute special orders earlier than one week in advance; and (7) the respective Leaders may establish additional guidelines for entering requests. *Manual* § 753a.

Oxford-style Debates

In the 103d Congress the House experimented with a number of so-called Oxford-style debates in lieu of conventional special orders. Such debates, derived from the British format, involve two teams of debaters—four members from each party—who then argue a single question. A moderator is chosen to regulate the debate, which lasts for 90 minutes. The debate is highly structured, with time controlled and allotted for each participant. *Manual* § 753c.

G. Duration of Debate in Committee of the Whole

§ 51. In General; Effect of Special Rules

At one time, there was no limit on the time which a Member might occupy in debate in the Committee of the Whole when once in possession of the floor. A Member might speak an unlimited time, whether in general debate or on an amendment. 5 Hinds § 5221. Today, when the House resolves into the Committee of the Whole without fixing the time for general debate each Member recognized has one hour (§ 52, infra). And when general debate is closed in the Committee of the Whole, any Member is allowed five minutes' debate on an amendment he offers, after which the Member who first obtains the floor has five minutes in opposition. Rule XXIII clause 5. *Manual* § 870. These time limitations do not apply, of course, where the measure is called up pursuant to a special rule or resolution which requires that a different period of time be devoted to debate. 90–2, Apr. 3, 1968, p 8776.

The Chairman of the Committee of the Whole monitors the time used by each Member for debate and announces the expiration thereof.

§ 52. General Debate

The duration and allocation of time for general debate in Committee of the Whole is controlled by the House, not the Committee. 91–2, Dec. 17, 1970, p 42222. Such control may be exercised through the adoption of unanimous-consent agreements (90–2, June 27, 1968, p 19105) or the adoption of a special rule from the Committee on Rules (89–2, Sept. 26, 1966, pp 23785, 23946). The Committee of the Whole may not, even by unani-

mous consent, extend the general debate time fixed by the House. 96–2, Feb. 22, 1980, p 3564.

If the House does not limit the time for general debate in Committee, debate in the Committee of the Whole is under the hour rule. 91–1, July 28, 1969, p 20850. And a Member having control of such time may not consume more than one hour. 87–2, Mar. 6, 1962, pp 3484, 3489; 91–1, July 29, 1969, pp 21174–78.

Frequently, the House order limiting general debate time in the Committee will also divide the control of the time between certain Members, such as the chairman of the reporting committee and its ranking minority member. While under the special rule a Member may have control of more than one hour of general debate on a bill in Committee of the Whole, he may not, under the general rules of the House, yield himself more than one hour for debate. 92–1, June 21, 1971, p 21096. Nor is it in order for a Member to whom time has been yielded to ask unanimous consent for additional time, for time is controlled by those to whom it is allotted by the House and is not subject to extension by the Committee. 91–2, Dec. 17, 1970, p 42222.

The Committee of the Whole may not, even by unanimous consent, change the control of general debate to Members other than those specified by the House. 99–2, Oct. 9, 1986, p 29984. However, in one instance, general debate which had been allocated only to the primary committee pursuant to a special rule was reallocated by unanimous consent to the chairmen and ranking minority members of three committees to which the bill had been sequentially referred. 99–1, Nov. 5, 1985, p 30462.

Effect of Absence of Members in Control

Where no member of the reporting committee is present at the appropriate time during general debate in the Committee of the Whole, the Chair may presume the time to have been yielded back. 98–2, June 11, 1984, p 15744. And where a committee that controls a portion of general debate time is not present on the floor at the appropriate time to use that time for debate and has indicated to the Chair that it does not wish to reserve time, the Chair may consider that time for general debate to have been yielded back. 99–1, Sept. 20, 1985, p 24565.

§ 53. Limiting or Closing General Debate

By Unanimous Consent in the House

Pending a motion to resolve into the Committee of the Whole, the House may by unanimous consent limit general debate to a time certain and

provide that at the conclusion of general debate the Committee shall rise. 88–1, Apr. 9, 1963, pp 6044, 6073. If objection is raised to the unanimous-consent request, the Speaker puts the question on the initial motion to go into the Committee of the Whole. 88–2, Aug. 11, 1964, p 18949.

By Motion in the House

After general debate has begun in the Committee and the Committee rises, a motion in the House to close or limit further general debate is in order. 5 Hinds §§ 5204–5206; *Manual* § 871. The motion is not in order until after debate in the Committee has begun (5 Hinds § 5204) and is made in the House pending the motion that the House resolve itself into Committee for further consideration of the bill, and not after the House has voted to go into Committee. 5 Hinds § 5208. The motion may not apply to a series of bills (5 Hinds § 5209) and the motion must apply to the whole and not to a part of a bill (5 Hinds § 5207). The motion may not be made in Committee of the Whole. 5 Hinds § 5217; 8 Cannon § 2548.

By Unanimous Consent in the Committee

While the motion to close general debate is not in order in the Committee of the Whole, the Committee may, in the absence of an order of the House, close debate by unanimous consent. 8 Cannon §§ 2553, 2554.

Although a bill is being considered in the Committee under a special rule specifying the time for general debate, the managers of the bill need not use all of the prescribed time. Under the modern practice, the Members in control of the time are permitted to yield it back and thereby shorten general debate in the Committee. 96–1, May 4, 1979, p 9918.

§ 54. Five-minute Debate

Generally

When general debate is closed in the Committee of the Whole, debate on amendments proceeds under the so-called five-minute rule. Clause 5 Rule XXIII. It provides:

> When general debate is closed by order of the House, any Member shall be allowed five minutes to explain any amendment he may offer, after which the Member who shall first obtain the floor shall be allowed to speak five minutes in opposition to it, and there shall be no further debate thereon, but the same privilege of debate shall be allowed in favor of and against any amendment that may be offered to an amendment. . . . *Manual* § 870.

Under this rule, the proponent of an amendment is entitled to five minutes of debate in favor of the amendment before a perfecting amendment

may be offered thereto. 98–2, May 31, 1984, p 14648. If, after a speech in favor of an amendment, no one claims the floor in opposition, the Chairman may recognize another Member favoring the amendment. 8 Cannon § 2557.

Speaking More Than Once

Generally, a Member may speak only once for five minutes on a pending amendment, although a point of order under this rule comes too late after that Member has been recognized and has begun to speak. 92–1, June 9, 1971, p 18988. Even when the Committee resumes consideration of an amendment which has been debated by its proponent on a prior day, the proponent may speak again for five minutes on his amendment only by unanimous consent. 96–1, Dec. 12, 1979, p 35529. And a Member recognized for five minutes on an amendment may not extend his time by offering another amendment. 8 Cannon §§ 2560, 2562. But a Member who has offered an amendment and spoken thereon is not precluded from seeking recognition to speak to a proposed amendment to his amendment. 90–1, Nov. 15, 1967, p 32644. And where there is pending an amendment and a substitute therefor, the Member offering the substitute may debate it for five minutes and subsequently be recognized to speak for or against the original amendment. Moreover, if debate on the pending amendment is limited, the five-minute rule is abrogated and Members who have already spoken on an amendment may be recognized again under the limitation. 91–2, July 28, 1970, p 26027.

Precluding Amendments; Effect of Special Rules

The House, and not the Committee of the Whole, controls the extent to which the offering of amendments may be precluded under the five-minute rule. The Committee cannot, even by unanimous consent, prohibit the offering of amendments otherwise in order under the rule. 98–2, July 31, 1984, p 21702.

A special rule adopted by the House for the consideration of a bill may preclude the offering of amendments under the five-minute rule. For example, if a special rule permits only designated amendments and prohibits amendments to amendments—only two five-minute speeches are in order on each designated amendment, one speech in support and one in opposition. 86–2, May 18, 1960, p 10576; 87–2, Oct. 5, 1962, p 22636; 89–1, Mar. 16, 1965, p 5099. A Member may obtain additional debate time only by unanimous consent. 96–1, Sept. 6, 1979, pp 23394, 23401. Since only the two five-minute speeches are in order, pro forma amendments are not permitted, and a third Member may be recognized only by unanimous consent.

95–1, Mar. 8, 1977, p 6632. A third Member is not entitled to recognition notwithstanding the fact that the second Member, recognized in opposition, actually spoke in favor of the amendment. 86–2, May 18, 1960, p 10579.

Yielding Time

A Member recognized under the five-minute rule may not yield his time to another Member. 5 Hinds §§ 5035–5037; 100–1, May 8, 1987, p 11832; *Manual* § 872. He may yield a portion of his time while remaining on his feet. But he may not yield to another to offer an amendment. 98–2, May 31, 1984, p 14648. If a Member resumes his seat before expiration of the five minutes another may not be recognized for the remainder of that time. 8 Cannon § 2571.

A Member may yield during debate under the five-minute rule while remaining standing to permit another Member to question him or make a comment, or to make a unanimous-consent request. But the time consumed thereby comes out of that of the Member holding the floor. 90–2, June 11, 1968, p 16699. Time consumed in yielding for a parliamentary inquiry is also charged against the five minutes. 88–1, Feb. 7, 1963, pp 2462, 2488.

Motions to Extend Time

A motion to extend debate under the five-minute rule is not in order in the Committee of the Whole. 86–1, June 18, 1959, p 11302. A Member recognized under the five-minute rule may extend his debate time only by unanimous consent (see § 57, infra), and a motion to that effect is not in order. 94–2, Apr. 28, 1976, p 11622.

Pro Forma Amendments

The pro forma amendment—to ''strike the last word''—is used under the five-minute rule only for purposes of debate or explanation, the proponent having no intent to offer a substantive amendment. A Member recognized to speak in favor of or in opposition to a pending amendment may later offer a pro forma amendment and thereby be entitled to a second five minutes for debate. See 91–2, July 28, 1970, p 26027. And a Member who has debated a substantive amendment may later rise in opposition to a pro forma amendment thereto. See 82–1, July 20, 1951, p 8566. But a Member who has been recognized for five minutes on a pro forma amendment cannot thereafter extend his time by offering a second pro forma amendment. 89–1, Mar. 25, 1965, p 6002. And a Member who has consumed five minutes in support of an amendment which he has offered cannot, except by unanimous consent, obtain additional time by offering a pro forma amend-

ment to his own amendment. 89–2, Aug. 17, 1966, p 19664; 93–2, June 21, 1974, p 20601.

Motions to Strike the Enacting Clause

The preferential motion to rise and report back to the House with the recommendation that the enacting clause be stricken is sometimes utilized to gain an additional five minutes for debate in the Committee of the Whole. Rule XXIII clause 7. *Manual* § 875. Debate on the preferential motion is limited to two five-minute speeches, and the Chair declines to recognize for requests for extensions of that time. 87–1, Sept. 19, 1961, p 20298. Only two five-minute speeches are permitted notwithstanding the fact that the second Member, recognized in opposition to the motion, spoke in favor thereof. 86–2, Mar. 18, 1960, p 6026. Debate time may not be reserved. 102–1, May 22, 1991, p ____.

Members of the committee managing the bill have priority in recognition for debate in opposition to the motion. 100–2, May 5, 1988, p 9955; 102–1, June 26, 1991, p ____.

If the House acts to strike the enacting clause as recommended by the Committee, the bill is considered rejected. *Manual* § 875; 5 Hinds § 5326. Generally, see COMMITTEES OF THE WHOLE.

§ 55. — Limiting or Extending Five-minute Debate — By House Action

By Unanimous Consent

The House, by unanimous consent, may agree to limit or extend debate under the five-minute rule in the Committee of the Whole, whether or not that debate has commenced. The House may by unanimous consent agree to an extension of time for such debate even after the Committee has previously agreed to terminate debate at an earlier time. 87–1, May 11, 1961, p 7869; 99–1, June 12, 1985, p 15379.

By Motion

A timely motion to limit debate on a matter pending in the Committee of the Whole under the five-minute rule has been held to lie in the House as well as in the Committee once that debate has begun. In an early decision Speaker Crisp held that the Committee did not have the exclusive right to limit debate on matters pending before it, and that a motion to limit debate on a section of a bill pending in Committee would lie in the House. 5 Hinds § 5229.

§ 56. — By Motion in the Committee of the Whole

Generally; When in Order

A motion in the Committee of the Whole to limit or close five-minute debate is permitted by House rule. Rule XXIII clause 6 (*Manual* § 874). The motion may propose to close debate instanter or at the expiration of a designated time. 8 Cannon § 2572. As noted above, a motion to extend five-minute debate is not in order in the Committee. § 54, supra.

Until a bill has been read for amendment in full or its reading dispensed with by unanimous consent, a motion to close or limit debate on the bill is not in order. 89–1, July 22, 1965, p 17932; 94–1, June 4, 1975, p 16895; 96–1, June 27, 1979, pp 17013, 17014. Until the last section of a bill being read by sections has been read, a motion to close debate on the entire bill is not in order. 89–1, Mar. 26, 1965, p 6104. Likewise, a motion to close debate on a section of a bill not yet reached in the reading of the bill for amendment is not in order. 91–1, July 31, 1969, p 21676. Similarly, when a bill is being read by titles, debate under the five-minute rule on titles that have not been read may not be closed except by unanimous consent. 88–2, Feb. 8, 1964, p 2614.

A motion to limit or close debate under the five-minute rule is not in order until debate has begun. 5 Hinds § 5225. Thus, a motion to close debate on a section of a bill or on an amendment is not in order until there has been some debate thereon. 89–1, Mar. 26, 1965, pp 6097, 6104; 90–1, Nov. 14, 1967, p 32349. However, the motion to close debate has been held in order after only one speech, even though brief (5 Hinds § 5226), and although the Member making the speech, after gaining recognition to strike out the last word, obtained consent to speak out of order. 89–1, Mar. 26, 1965, pp 6098, 6104.

After debate has begun, a motion in the Committee to close debate under the five-minute rule is privileged. 89–1, Mar. 26, 1965, pp 6098, 6104. The motion cannot deprive another Member of the floor (88–2, Mar. 12, 1964, p 5118), but once pending the motion must be disposed of prior to further recognition by the Chair (87–2, June 5, 1962, p 9713).

While it is customary for the Chair to recognize the manager of the pending bill to offer motions to limit debate, any Member may, pursuant to Rule XXIII clause 6, move to limit debate at the appropriate time in Committee of the Whole. 94–1, July 31, 1975, p 26223. But the Member managing the bill is entitled to prior recognition to move to close debate on a pending amendment (after the proponent has had his time) over other Members. 91–2, Nov. 25, 1970, p 38990; 95–1, June 22, 1977, p 20288.

It is in order in the Committee of the Whole to move to limit or close debate under the five-minute rule with respect to:

- The portion of the text which is pending. 88–2, Feb. 8, 1964, p 2614; 91–2, June 18, 1970, p 20469.
- An amendment and all amendments thereto pending in the Committee. 98–2, July 26, 1984, pp 21249, 21250.
- All amendments to the bill (after the bill has been read) and all amendments thereto (except on a specified amendment). 98–1, July 26, 1983, pp 20943, 20944.
- A pending committee amendment in the nature of a substitute and all amendments thereto. 98–1, Mar. 16, 1983, pp 5794–96.
- A pending section and all amendments thereto. 99–1, Oct. 3, 1985, p 25986.

A proposition to control or divide the time is not in order as a part of a motion to limit debate under the five-minute rule. 8 Cannon § 2570. Clause 6 of Rule XXIII permits the Committee of the Whole by motion to limit debate on the pending portion of a bill (and on all amendments thereto) or just on a pending amendment (and all amendments thereto), but does not permit a motion to limit and allocate separate time for debate on perfecting amendments not yet offered; the Committee may, by subsequent unanimous consent or motions, separately limit and allocate debate on each perfecting amendment after it has been offered. 98–1, Mar. 16, 1983, pp 5794–96.

A motion to limit debate on an amendment and all amendments thereto (but not on the pending section) does not affect debate under the five-minute rule on another amendment subsequently offered to the same section of the bill. 95–1, June 22, 1977, p 20290. Likewise, where a time limitation is imposed on an amendment but not on the original text, debate on perfecting amendments to the original text proceeds under the five-minute rule absent another time limitation thereon. 98–1, Apr. 13, 1983, pp 8402–04. However, a limitation of debate under the five-minute rule on a pending amendment and all amendments thereto applies to debate on any substitute for the amendment that might subsequently be offered. 98–1, Apr. 21, 1983, p 9341.

A limitation on debate on a section of a bill and amendments thereto does not affect debate on an amendment adding a new section to the bill. 96–1, Aug. 1, 1979, pp 21963, 21964, 21969. The Chair may decline to recognize a Member to offer such an amendment until perfecting amendments to the pending section have been disposed of under the limitation. 96–1, June 26, 1979, pp 16679, 16680.

Consideration of Motion; Debate and Amendments

A motion to limit debate under the five-minute rule must be reduced to writing if demanded by any Member. 93–1, Dec. 14, 1973, pp 41712, 41713. The motion is not debatable. 93–1, Dec. 14, 1973, pp 41712, 41713; 94–1, Apr. 23, 1975, p 11534; 95–1, May 18, 1977, p 15418. While not debatable, the motion is subject to amendment. 5 Hinds § 5227; 8 Cannon § 2578.

An agreement in the Committee to a motion to limit debate is not subject to a motion to reconsider. 90–1, May 24, 1967, p 13824. However, the Committee may by unanimous consent rescind such an agreement. 89–2, Aug. 5, 1966, p 18416; 93–1, Dec. 14, 1973, p 41731.

§ 57. — By Unanimous Consent in the Committee of the Whole

Generally

Debate under the five-minute rule in the Committee of the Whole may be closed or limited by the Committee by unanimous consent, even on portions of the bill not yet read. 87–1, May 10, 1961, p 7225; 88–2, Feb. 8, 1964, p 2614; 98–1, Mar. 16, 1983, pp 5794–96. An extension of the time which has been fixed for five-minute debate is likewise permitted by unanimous consent unless barred by special rule from the Committee on Rules. 86–2, June 23, 1960, pp 14055–58; 90–1, Nov. 15, 1967, pp 32691–94; 95–1, Oct. 20, 1977, p 34714. The Committee of the Whole can change procedures set by a special order only by unanimous consent and only where congruent with the terms of the special order. See *Manual* § 877a.

In limiting debate by unanimous consent under the five-minute rule, the Committee may specify an appropriate time frame and also include provisions as to the control of the time. The Committee may, by unanimous consent, limit debate to a certain number of hours of debate, equally divided and controlled. 99–1, Oct. 3, 1985, pp 25897, 25947. Or the Committee may by unanimous consent limit debate to a time certain, to be equally divided and controlled. 99–2, July 31, 1986, pp 18357, 18358. The Committee has limited debate to:

- Fifteen minutes on each amendment that might be offered. 89–2, Oct. 14, 1966, p 26968.
- Twenty minutes on a side, time on each side to be controlled by the majority and minority members in charge of the bill. 89–2, May 10, 1966, p 10232.
- Thirty minutes on a pending motion to strike, the time to be controlled equally by the managers of the bill. 89–2, Aug. 4, 1966, p 18207.

- One hour, the time to be divided between the majority and minority sides and controlled by the subcommittee chairman handling the bill and the proponent of the amendment. 89–2, May 26, 1966, p 11608.
- Two hours, controlled by the chairman and ranking member of the reporting committee. 89–1, July 8, 1965, pp 16036–38.

Rescission or Modification of Limitation

A time limitation on debate imposed by the Committee of the Whole may be rescinded or modified by the Committee by unanimous consent (but not by motion). 94–1, Sept. 17, 1975, p 28904; 95–1, Mar. 3, 1977, p 6193. The Committee having limited debate, the Chair declines to recognize for a motion to extend the time, but a unanimous-consent request to extend or allot the time may be entertained. 90–2, June 11, 1968, p 16699. The Committee may by unanimous consent permit additional debate on an amendment prior to its being offered notwithstanding a previous limitation on debate under the five-minute rule on all amendments to the bill. 98–1, Oct. 4, 1983, pp 27099, 27102.

§ 58. Motions Allocating or Reserving Time

A motion to limit debate under the five-minute rule on a pending amendment in the Committee of the Whole is not in order if it includes a provision for allocation or division of time between two or more Members; debate time can be allocated between Members only by unanimous consent. 98–2, Aug. 2, 1984, pp 22180, 22181. Thus, the Committee may, during the reading of a bill under the five-minute rule, limit debate by unanimous consent and include in the request a reservation of the last portion of time to the committee handling the bill. 88–1, May 9, 1963, p 8144. The same procedure may be used to limit debate and reserve a certain amount of time for certain Members. 96–1, May 16, 1979, p 11444.

A motion to limit debate under the five-minute rule in the Committee of the Whole is not in order if it includes a reservation of time for any special purpose. 91–1, Sept. 16, 1969, p 25633; 93–1, May 9, 1973, pp 15010, 15011. Such a motion may not include a reservation of time for the reporting committee (90–1, June 15, 1967, p 15903; 92–2, May 18, 1972, p 18035) or for a particular Member. 92–2, Oct. 5, 1972, p 34137; 94–2, June 18, 1976, p 19251. The motion may not include a reservation of time to the ''majority side'' (89–2, Sept. 28, 1966, p 24105), nor may it include a provision for division of time between the proponents and opponents of the pending amendment. 90–1, May 24, 1967, p 13824; 92–1, Nov. 30, 1971, p 43406. However, a point of order against a motion to close debate

and reserve time comes too late after the question has been put and agreed to. 86–2, June 23, 1960, p 14088.

§ 59. Timekeeping; Charging Time

Generally

A limitation on debate under the five-minute rule may take the form of a restriction on *debate time* (i.e., ''for 60 minutes'') or as a limitation on debate to a *time certain* (i.e., ''until 5 p.m.''). The form of the limitation is particularly significant in determining how the time is to be accounted for under the limitation. When *debate time* on a proposition is limited to a fixed period, such as 60 minutes, the time consumed for purposes other than debate (such as a quorum call) is not counted or charged against the allowable time for debate. 89–2, May 26, 1966, p 11608; 95–2, Feb. 1, 1978, pp 1827, 1828; 98–2, Feb. 2, 1984, pp 1432, 1433. Time consumed by voting is not counted against the limitation (88–2, Feb. 10, 1964, p 2705; 94–2, Sept. 28, 1976, p 33082) nor is time consumed on a point of order (98–1, June 15, 1983, p 15818).

On the other hand, where the time for debate has been fixed to a *time certain*, such as 5 p.m., the time consumed by matters other than debate is charged against the time remaining, thus reducing the time for debate allowable to Members. 87–2, Jan. 23, 1962, pp 769, 773; 98–2, Feb. 2, 1984, pp 1432, 1433. A request or motion to close debate at a *time certain* should specify that the debate cease at a certain time, and not that the Committee of the Whole vote at a certain time, since the Chair cannot control time consumed by quorum calls or votes on other intervening motions. 95–1, June 29, 1977, pp 21383, 21384; 98–1, Nov. 10, 1983, p 32172. The time consumed on the related procedural matter comes out of the total allocation of remaining time and is proportionally deducted from those Members who have not yet spoken under the allocation. 95–2, July 19, 1978, p 21704; 95–2, Apr. 26, 1978, p 11642. The Chair then reallocates the balance of the time among the remaining Members. 95–2, Apr. 26, 1978, p 11649. Such a limitation terminates all debate at the time specified notwithstanding that some allotted time remains unused when debate expires. 94–2, May 11, 1976, p 13427. The time specified can be extended only by unanimous consent. 98–2, Aug. 2, 1984, pp 22180, 22181; 99–1, Oct. 3, 1985, pp 25986, 25995. For this reason it may not be possible for the Chair to reach each Member to whom time has been allocated before the time expires. 88–2, Aug. 7, 1964, pp 18583, 18608. In such cases, no point of order lies against the inability of the Chair to recognize each Member on the list. 95–1, June 27, 1977, p 20918.

Where debate has been limited to a *time certain*, time consumed by the Chair in maintaining order in the Chamber comes out of the remaining available debate time. But where debate has been limited to a certain number of minutes, time consumed by the Chair in maintaining order does not come out of the time allocated to Members for debate. See 99–1, June 18, 1985, p 16098. The same distinction is applied to time consumed on a preferential motion to strike the enacting clause. 97–2, July 21, 1982, p 17347. See also 91–2, May 6, 1970, p 14452; 96–1, Sept. 18, 1979, pp 25078, 25091.

Role of Chairman in Allocating Time

Where debate on an amendment has been limited, the Chair has several discretionary options in allocating the remaining time. He may (1) continue to recognize under the five-minute rule; (2) divide the time between Members indicating a desire to speak; or (3) as is increasingly the case under the modern practice, divide time between the proponent of the amendment and a Member (or bill manager) opposed and allow them in turn to suballocate their time. 97–2, May 25, 1982, p 11672; 97–2, Aug. 5, 1982, p 19758.

Time Remaining After Committee Rises

The adoption of a motion to rise during debate on an amendment in the Committee of the Whole does not affect the time remaining on the amendment when the bill is resumed as unfinished business in the Committee of the Whole, where debate is limited to a number of minutes and not to a time certain. 99–2, Aug. 14, 1986, p 21691. Time for debate remains under the limitation when the Committee resumes consideration at a subsequent time. 93–2, July 24, 1974, p 25009. But where a measure has been limited to a *time certain* (i.e., 5 p.m. that day), and the Committee rises before that time without having completed action on the pending measure, no time is considered as remaining when the Committee, on a later day, again resumes consideration of the measure. 91–2, May 6, 1970, p 14452. See also 87–1, May 10, 1961, pp 7725, 7728. The limitation on debate carries over to prevent debate on the pending question on the subsequent day, and the Committee may extend debate on the subsequent day only by unanimous consent. 95–1, Oct. 20, 1977, p 34714.

Where after limiting debate under the five-minute rule the Committee of the Whole is about to rise on motion, the Chair may, in his discretion, defer his allocation of that time until the Committee resumes consideration of the bill on a subsequent day. 95–2, Sept. 11, 1978, p 28800; 96–1, Oct. 24, 1979, pp 29384, 29385.

H. Reading Papers; Displays and Exhibits

§ 60. Reading Papers

A Member recognized for debate may read his speech from papers. 103–1, Jan. 27, 1993, p ____. Indeed, it has long been the practice of the House to permit Members to read in debate from papers not being voted on, no other Member objecting. This practice was followed both in the House and the Committee of the Whole. 5 Hinds §§ 5285–5291; 8 Cannon §§ 2597, 2602; 100–1, Dec. 10, 1987, p 34668. However, under an earlier version of Rule XXX, if objection was made to such a reading, the question was to be determined by a House vote without debate. (This rule was amended in 1993 to apply only to exhibits and no longer to readings. *Manual* § 915.)

§ 61. Use of Exhibits

Generally

Members often use relevant exhibits in debate for the information of other Members. However, the display of exhibits in debate is subject to the requirement of House consent under Rule XXX if objection is made. Notwithstanding an objection under Rule XXX, the House may vote to permit a Member to utilize the exhibit during debate. The use of an exhibit during debate in the Committee of the Whole is likewise permitted, subject to the vote of the Committee upon objection by any Member. 99–1, June 19, 1985, p 16359.

Exhibits which have been permitted by the House or the Committee, either by vote or because no objection was raised, include:

- A pair of oversized dice. 89–2, June 8, 1966, p 12572.
- Models prepared by the Committee on Science and Astronautics. 88–1, Aug. 1, 1963, p 13853.
- Electronic voting equipment to be installed in the House Chamber. 92–2, Oct. 13, 1972, p 36008.
- A bottle of liquor alleged to be ''government rum.'' 75–1, June 21, 1937, p 6104.
- A chart showing complex funding formulas. 93–2, Mar. 12, 1974, p 6269.
- Photographs of missing children. 99–1, Apr. 2, 1985, p 7221.
- A display of dismantled weapons. 99–1, Apr. 23, 1985, p 9024.
- A chart showing stockpiled weaponry. 99–1, June 19, 1985, p 16359.

The Speaker may under Rule I direct the removal of an exhibit from the well if not being utilized during debate. 97–2, Apr. 1, 1982, p 6303. The Chairman of the Committee of the Whole may also direct the removal

from the well of charts or other displays if not currently being utilized in debate. 97–2, May 25, 1982, p 11752.

The Speaker has denied a request that a Member be permitted to use a video recorder on the floor of the House during a special-order speech, as a visual-sound display of comments by nonmembers would be contrary to precedents limiting the privilege of debate to Members. 96–2, Feb. 11, 1980, p 2596.

§ 62. — Decorum Requirements

The Speaker's responsibility under Rule I clause 2 to preserve decorum requires that he disallow the use of exhibits in debate which would be demeaning to the House or which would be disruptive of the decorum thereof. 101–1, Sept. 13, 1989, p 20362; 101–2, Oct. 11, 1990, p ____. Thus he may inquire as to a Member's intentions, as to the use of exhibits, before conferring recognition to address the House. 98–2, Mar. 21, 1984, p 6187. In one instance, the Chair declined to permit a bumper sticker to be attached to the lectern in the House Chamber. 101–1, Sept. 13, 1989, p 20362; 101–2, Oct. 11, 1990, p ____. In 1995, a caricature of the Speaker presented during debate was ruled out of order. 104–1, Nov. 16, 1995, p ____. In another recent instance, where a Member during debate on a bill funding the arts indicated his intention to show as exhibits certain photographs—some innocuous and some alleged to be pornographic—the Chair announced that he would prevent the display of *all* such exhibits on the pending bill. The Chair observed that although the First Amendment to the Constitution provides that Congress shall make no law abridging the freedom of speech, the Constitution also provides in Article I that the House may determine the rules of its proceedings, and in clause 2 of Rule I the House has assigned to the Chair the responsibility to preserve order and decorum. 101–2, Oct. 11, 1990, p ____.

Exhibits as a breach of order in the House, see § 21, supra.

I. Secret Sessions

§ 63. In General

Generally; Historical Background

In the early days of the Congress secret sessions of the House were frequent. The sessions of the Continental Congress were secret. Up to and during the War of 1812, secret sessions were held often; the House sat with galleries open, but when the occasion required, as on receipt of a confiden-

tial communication from the President (5 Hinds § 7251), the galleries were cleared by House order. 5 Hinds § 7247 (note). Following that period, the practice fell into disuse, remaining dormant for almost a century (6 Cannon § 434), and there have been but few secret sessions in the modern era.

It has been held that each House has a right to hold secret sessions whenever in its judgment the proceedings should require secrecy. In 1848, the Circuit Court of the District of Columbia upheld a Senate contempt proceeding conducted in a secret session arising out of the publication of a treaty pending before the Senate in executive session. *Nugent* v *Beale*, 18 Fed Cases 141, No. 10375. See also 2 Hinds § 1640.

Procedure

The oath of office taken by elected House officers obligates them to ''keep the secrets of the House.'' Rule II. *Manual* § 635. A House rule dating from 1792 mandates the holding of a secret session (1) whenever confidential communications are received from the President, or (2) whenever the Speaker or any Member informs the House that he has communications which he believes ought to be kept secret. Rule XXIX. *Manual* § 914.

The House, and not the Committee of the Whole, determines whether to conduct a secret session under Rule XXIX. 96–1, June 20, 1979, pp 15710, 15711. Provision for the session is generally made pursuant to a motion considered in the House. (§ 64, infra). The material to be presented in the secret session is not required to be relevant to any particular legislation. 96–1, June 20, 1979, pp 15711–13. It is not in order to make a point of order in the secret session that the material in question must be produced to the Members in advance to determine whether secret or confidential communications are involved. 96–1, July 17, 1979, p 19049.

Use of Special Rules

In 1983, for the first time, a secret session was held pursuant to a special rule from the Committee on Rules and adopted by the House. The special rule provided for preliminary general debate on a bill in secret session and for consideration of the bill for amendment under the five-minute rule in the Committee of the Whole. 98–1, July 14, 1983, pp 19133–35 (H. Res. 261). Following the secret session, the Speaker stated that Members were bound not to release or revise or make public any of the transcript thereof until further order of the House, and that pursuant to the special rule the transcript would be referred to the two committees reporting the bill. 98–1, July 19, 1983, pp 19776, 19777. Six months later, the Speaker laid before the House communications transmitting the recommendations of those com-

mittees that the transcript of the secret session not be publicly released. 98–2, Jan. 23, 1984, p 84.

§ 64. Motions; Debate

A motion to go into a secret session is in order when any Member informs the House that he has communications which he believes should be considered in confidence. The motion takes precedence over a motion to resolve into the Committee of the Whole for the consideration of nonprivileged legislative business, such as a special appropriation bill. 8 Cannon § 3630.

The motion to resolve into secret session may be made only in the House and not in the Committee of the Whole. 95–2, June 6, 1978, p 16376; 96–1, June 20, 1979, p 15711. The Member making the motion must qualify by asserting that he himself has a secret communication to make to the House. 95–2, June 6, 1978, p 16376. The motion is not debatable, although the Chair may explain the operation of the rule and respond to parliamentary inquiries after the motion has been agreed to and before the secret session commences. 96–1, June 20, 1979, pp 15711–13.

After a motion to resolve into a secret session has been adopted, the Member who offered the motion may be recognized for one hour of debate. The normal rules of debate, including the principle that no motions are in order unless the Member in control yields for that purpose, apply. 96–1, July 17, 1979, pp 19057–59.

A motion in secret session to make the proceedings public is debatable for one hour, within narrow limits of relevancy. At the conclusion of debate in secret session, a Member may be recognized to offer a motion that the session be dissolved. 96–1, July 17, 1979, pp 19057–59.

§ 65. Secrecy Restrictions and Guidelines

The Speaker may announce before a secret session commences that the galleries will be cleared, that the Chamber will be cleared of all persons except Members and those officers and employees specified by the Speaker whose attendance on the floor is essential to the functioning of the secret session, and that all proceedings in the secret session must be kept secret until otherwise ordered by the House. 96–1, June 20, 1979, p 15711. In one instance, the Speaker directed all officers and employees designated by him as essential to the proceedings to come to the pages' desk and sign an oath of secrecy. The Speaker announced that violation of the oath was punishable by the House and that Members and employees were subject to standards of conduct and disciplinary proceedings under House rules. 96–1, July 17,

1979, p 19049. Where the House has concluded a secret session and has not voted to release the transcripts of that session to the public, the injunction of secrecy remains and the Speaker may informally refer the transcripts to appropriate committees for their evaluation and report to the House as to their ultimate disposition. 96–1, June 20, 1979, p 15713.

Committee meetings in executive session, see COMMITTEES.

Contempt Power

Research References

2 Hinds §§ 1597–1640; 3 Hinds §§ 1666–1724
6 Cannon §§ 332–334
4 Deschler Ch 15 §§ 17–22
Manual §§ 293–299
2 USC §§ 192, 194

§ 1. In General

An individual who fails or refuses to comply with a House subpena may be cited for contempt of Congress. *Eastland* v *United States Servicemen's Fund*, 421 US 491 (1975). Although the Constitution does not expressly grant Congress the power to punish witnesses for contempt, that power has been deemed an inherent attribute of the legislative authority of Congress. See *Anderson* v *Dunn*, 19 US 204 (1821).

To supplement this inherent power, the Congress in 1857 adopted an alternative statutory contempt procedure (§ 2, infra). Thus, the House may either (1) certify a recalcitrant witness to the appropriate United States Attorney for possible indictment under this statute or (2) exercise its inherent power to commit for contempt by detaining the witness in the custody of the Sergeant at Arms. *Manual* § 296. The first procedure is the one utilized today, but the ''inherent power'' still remains available. In one instance, the House invoked not only its inherent contempt power, but also proceeded against a witness under the alternative statutory contempt procedure. 3 Hinds § 1672.

Under the inherent contempt power of the House, the recalcitrant witness may be arrested and brought to trial before the bar of the House, with the offender facing possible incarceration. 3 Hinds § 1685. The first exercise of this power in the House occurred in 1812, when the House proceeded against a newspaper editor who declined to identify his source of information that had been disclosed in executive session. 3 Hinds § 1666. Such powers had been exercised prior to the adoption of the U.S. Constitution

by the Continental Congress as well as by England's House of Lords and House of Commons. *Jurney* v *MacCracken,* 294 US 125 (1935).

At the trial of the witness in the House, questions may be put to the witness by the Speaker (2 Hinds § 1602) or by a committee (2 Hinds § 1617; 3 Hinds § 1668). In one instance, the matter was investigated by a committee and the respondent then brought to the bar of the House, and a resolution was reported to the House for its vote. 2 Hinds § 1628.

The inherent power of Congress to find a recalcitrant witness in contempt has not been invoked by the House in recent years because of the time-consuming nature of the trial and because the jurisdiction of the House cannot extend beyond the end of a Congress. See *Anderson* v *Dunn,* 19 US 204 (1821).

§ 2. Statutory Contempt Procedure

Generally

An alternative statutory contempt procedure was adopted in 1857. Under this statute, the refusal to comply with a congressional subpena is made punishable by a fine of up to $1,000 and imprisonment for up to one year. 2 USC § 192. Pursuant to this statute, a committee may vote to seek a contempt citation against the recalcitrant witness; this action is then reported by resolution to the House. If the resolution is adopted by the House, the matter is referred to a U.S. Attorney who is to seek an indictment. See 2 USC § 194; *Manual* § 299. In the 97th Congress, such a resolution was adopted following the failure of an official of the executive branch (EPA Administrator Anne M. Gorsuch) to submit executive branch documents to a House subcommittee pursuant to a subpena. This was the first occasion on which the House cited a chief executive branch official for contempt of Congress. See H. Res. 632, 97–2, Dec. 16, 1982, pp 31746, 31754–56, 31776. In the same Congress, Secretary of the Interior James G. Watt was cited for contempt for withholding subpenaed documents and for failure to answer questions. The contempt citation was reported to the House by the oversight and investigations subcommittee of the Committee on Energy and Commerce. See H. Rept. No. 97–898. An accommodation was reached on the documents, and the House took no action on the report. In 1983, a committee report recommended the adoption of a resolution finding Rita M. LaVelle (former EPA Assistant Administrator) in contempt of Congress for failing to appear in response to a subpena. See H. Rept. No. 98–190, May 16, 1983. The House then adopted a resolution certifying such refusal to the U.S. Attorney. 98–1, May 18, 1983, p 12720.

Floor Consideration

A contempt citation must be reported to the House pursuant to formal action by the committee. *Ex parte Frankfield*, 32 F Supp 915 (D.C.D.C. 1940). A committee report relating to the refusal of a witness to testify is privileged for consideration in the House (86–1, Sept. 3, 1959, pp 17927–34), as is a report relating to the refusal of a witness to produce certain documents as ordered. 86–2, Aug. 23, 1960, pp 17278 *et seq*. The report is presented and read. A resolution may then be offered directing the Speaker to certify the refusal to a U.S. Attorney. 86–2, Aug. 23, 1960, pp 17278–313. Such a resolution may be offered from the floor as privileged, since the privileges of the House are involved, and a committee report to accompany the resolution may be presented to the House without regard to the three-day availability requirement for other reports. 92–1, July 13, 1971, pp 24720–23.

A resolution with two resolve clauses separately directing the certification of the contemptuous conduct of two individuals is subject to a demand for a division of the question as to each individual. 99–2, Feb. 27, 1986, p 3061.

§ 3. — Duties of the Speaker and U.S. Attorney

The controlling statute provides that when the witness fails or refuses to answer or produce the required documents, and such failure is reported to the House—or to the Speaker when the House is not in session—it ''shall be the duty'' of the Speaker to certify the facts to the United States Attorney for presentation to the grand jury. 2 USC § 194. Notwithstanding the language in the statute referring to the ''duty'' of the Speaker, the court in *Wilson* v *United States*, 369 F2d 198 (1966) held that the Speaker erred in construing the statute to prohibit any inquiry into the matter by him, and that his automatic certification of a case to the U.S. Attorney during a period of *sine die* adjournment was invalid. Since the incident that gave rise to this judicial decision, no contempt reports have been filed following a *sine die* adjournment so the authority of the Speaker has not been utilized.

§ 4. — Defenses; Pertinency Requirement

The statute which penalizes the refusal to answer in response to a congressional subpena provides that the question must be ''pertinent to the question under inquiry.'' 2 USC § 192. That is, the answers requested must (1) relate to a legislative purpose which Congress may constitutionally entertain, and (2) fall within the grant of authority actually made by Congress to the committee. Deschler Ch 15 § 6. In a prosecution for contempt of Con-

gress it must be established that the committee or subcommittee was duly authorized and that its investigation was within the scope of delegated authority. *US* v *Seeger*, C.A.N.Y. 303 F2d 478 (1962). A clear chain of authority from the House to its committee is an essential element of the offense. *Gojack* v *US*, 384 US 702 (1966).

The statutory requirement that a committee question be pertinent is an essential factor in prosecuting the witness for contempt. The right of a witness to refuse to answer a question that is not pertinent is not a personal privilege that can be waived if not asserted. Pertinency will not be presumed. *Bowers* v *United States*, 202 F2d 447 (D.C. Cir. 1953). The committee has a burden to explain to the witness that a question is pertinent and that despite the witness' objection, the committee demands an answer. *Barenblatt* v *United States*, 252 F2d 129 (D.C. Cir. 1958), *aff'd*, 360 US 109 (1959); *Davis* v *United States*, 269 F2d 357 (6th Cir.), *cert. denied*, 361 US 919 (1959).

In contempt proceedings brought under the statute, constitutional claims and other objections to House investigatory procedures may be raised by way of defense. *US* v *House of Representatives*, 556 F Supp 150 (1983). The courts must accord the defendant every right ''guaranteed to defendants in all other criminal cases.'' *Watkins* v *United States*, 354 US 178 (1957). All elements of the offense, including willfulness, must be proven beyond a reasonable doubt. *Flaxer* v *United States*, 358 US 147 (1958). But the courts have been extremely reluctant to interfere with the statutory scheme by considering cases brought by recalcitrant witnesses seeking declaratory or injunctive relief. See, for example, *Eastland* v *United States Servicemen's Fund*, 421 US 491 (1975); *US* v *House of Representatives*, 556 F Supp 150 (1983).

To justify withholding subpenaed information, a witness sometimes contends that the President has claimed executive privilege with respect thereto or has directed the witness not to disclose the information. However, the Supreme Court has rejected the claim that the President has an absolute, unreviewable executive privilege. See *United States* v *Nixon*, 418 US 683 (1974). Moreover, noncompliance with a congressional subpena by a government official may not be justified on the ground that he was acting under the orders of his superior. See *United States* v *Tobin*, 195 F Supp 588 (D.D.C. 1961).

§ 5. Purging Contempt

A witness in violation of a House subpena has been permitted to purge himself by compliance with its terms prior to the issuance of an indictment.

3 Hinds §§ 1666, 1686. However, once judicial proceedings to enforce the subpena have been initiated, the defendant cannot purge himself of contempt merely by producing the documents or testimony sought. See *United States* v *Brewster*, 154 F Supp 126 (D.D.C. 1957), *cert. denied*, 358 US 842 (1958). At this stage, the House itself must consider and vote on whether to permit a discontinuance. The committee that sought the contempt citation submits a report to the House indicating that substantial compliance on the part of the witness has been accomplished; the House then adopts a resolution certifying the facts to the United States Attorney to the end that contempt proceedings be discontinued. *Manual* § 299. For example, in the 98th Congress, after EPA Administrator Anne Gorsuch had been cited in the prior Congress for contempt for failure to produce certain documents for a House subcommittee, the House adopted a resolution certifying to the U.S. Attorney that agreement had been reached between the committee and the executive branch giving the committee access to those documents. 98–1, Aug. 3, 1983, p 22698.

It should be pointed out that while a witness cannot by himself purge his contempt after judicial proceedings have begun, a court may suspend the sentence of a witness convicted of contempt and give him an opportunity to avoid punishment by giving testimony before a committee whose questions he had refused to answer. Deschler Ch 15 § 21.

Delegates and Resident Commissioners

Research References

1 Hinds §§ 400–410
6 Cannon §§ 240–246
2 Deschler Ch 7 § 3
Manual § 740

§ 1. In General

Generally

The Delegates and Resident Commissioners are those statutory officers who represent in the House the constituencies of territories and properties owned or administered by the United States but not admitted to statehood. Deschler Ch 7 § 3. The Virgin Islands, Guam, and American Samoa, as well as the District of Columbia, are represented in the House by a Delegate, while Puerto Rico is represented by a Resident Commissioner. *Manual* § 740. The rights and prerogatives of a Delegate in parliamentary matters are not limited to legislation affecting his own territory. 6 Cannon § 240.

§ 2. In the House

The floor privileges of a Delegate or a Resident Commissioner in the House include the right to debate (2 Hinds § 1290), make motions (2 Hinds § 1291), and raise points of order (6 Cannon § 240); but he cannot vote in the House nor serve as its presiding officer. See *Manual* § 740. He may make any motion a Member may make (2 Hinds § 1292) including the motion to adjourn (97–1, Jan. 9, 1981, p 248), but not the motion to reconsider (2 Hinds § 1292), which is itself dependent on the right to vote. He may make reports for committees (*Manual* § 740) and may object to the consideration of a bill (6 Cannon § 241; Deschler Ch 7 § 3.7). Impeachment proceedings have been moved by a Delegate. 2 Hinds § 1303.

§ 3. In Committees

The House rules now extend to Delegates and the Resident Commissioner all the powers in committee held by constitutional Members of the House. They are elected to serve on standing committees in the same manner as Members of the House and possess in such committees the same powers and privileges as the other Members. Rule XII. *Manual* § 740. They have the right to vote in committees on which they serve. Seniority accrual rights on committees have also been extended to the Delegates and Resident Commissioner. Deschler Ch 7 § 3.11. They may be appointed by the Speaker to any conference committee. The Speaker also now has the authority to appoint them to any select committee (*Manual* § 701g), an appointment that previously required the permission of the House (94–2, Sept. 21, 1976, p 31673).

§ 4. In Committee of the Whole

Under a rule adopted in 1993, when the House was sitting in Committee of the Whole, the Delegates and Resident Commissioner had the same powers and privileges as Members. In the same year, the Speaker was given authority to appoint a Delegate or Resident Commissioner as Chairman of the Committee of the Whole. These provisions were stricken from the rules as adopted in January 1995. 104–1, H. Res. 6.

Discharging Measures From Committees

Research References
7 Cannon §§ 1007–1023
5 Deschler Ch 18
Manual § 908

§ 1. In General; Alternative Methods

There are certain procedures that effectively discharge a committee or which may be invoked whenever a committee fails or refuses to report a measure. These methods include:

- The motion to discharge a public bill or resolution available under Rule XXVII clause 3 after the measure has been pending in committee for more than 30 days. *Manual* § 908. See §§ 2 *et seq.*
- A motion to discharge the Committee on Rules from a special rule relating to an unreported bill which has been pending before it for seven days (also in Rule XXVII clause 3).
- The motion to suspend the rules available under Rule XXVII clause 1 pursuant to a vote of two-thirds of the Members. *Manual* § 902.

  Note: The motion to suspend the rules and pass a bill applies to bills that have not been reported from committee. 8 Cannon § 3421. Generally, see SUSPENSION OF RULES.
- The Speaker's referral (under Rule X clause 5) of a bill pursuant to time limits which result in the discharge of the bill from committee at the end of the designated time. *Manual* § 700.
- A resolution reported by the Committee on Rules providing for the consideration in the House of an unreported bill; the effect of the resolution, if adopted, is to discharge the committee before which the bill is pending. 5 Hinds § 6771.
- A unanimous-consent request agreed to by the House (the procedure does not lie in the Committee of the Whole). 4 Hinds § 4697; 102–2, June 4, 1992, p ____.

Note: Recognition for such a request is within the discretion of the Chair, and the Speaker will not entertain such a request without the consent of the chairman and ranking minority member of the committee considering the measure (97–2, May 4, 1982, p 8613) and the majority and minority floor leadership (see *Manual* § 757 for the ''Speaker's guidelines'').

As to the procedures for discharging a committee from a resolution of inquiry, see RESOLUTIONS OF INQUIRY. Discharge of vetoed bills, see § 8, infra. Discharge pursuant to statute, see § 9, infra.

§ 2. The Discharge Rule; Motions to Discharge

Generally

Under Rule XXVII clause 3, a Member may file with the Clerk a motion (sometimes called a petition) to discharge a committee from the consideration of a public bill or resolution which was referred to the committee 30 days prior thereto. *Manual* § 908. The word ''days'' has been construed to mean legislative days. 75–2, Dec. 10, 1937, p 1300. The period of time specified by the rule does not begin to run until the committee is appointed or elected. 7 Cannon § 1019.

The Clerk makes the petition available at the rostrum for Members to sign while the House is in session. When the requisite number of signatures are obtained—a majority of the total membership (86–2, June 3, 1960, p 11837)— the motion is entered on the Journal, printed in the Record, and referred to the Discharge Calendar. Rule XXVII clause 3. When the motion has been on the calendar for seven legislative days, it may be called up in the House under the discharge rule on the second and fourth Mondays of the month. The motion is then debated for 20 minutes and voted on. If the motion prevails, it is in order to proceed to consider the discharged measure pursuant to a motion to that effect. See § 6, infra. To pass a measure under the discharge rule thus involves numerous separate and distinct stages:

- The filing of the petition after the expiration of the 30-day period;
- Obtaining the necessary signatures;
- Entry in the Journal and printing (with signatures) in the Record;
- Reference to the Discharge Calendar;
- Calling up, debating, voting on the motion to discharge;
- Agreement to proceed to consider the discharged measure; and
- Debate and vote on the discharged measure itself (§ 7, infra).

Petitions to discharge committees are filed with the Clerk and are not presented from the floor, but Members may give notice of the filing of such

petitions, either from the floor or by letter. 7 Cannon § 1008. Once the motion has been filed, the Clerk makes the signatures a matter of public record. *Manual* § 908.

Reoffering of Motion

When a perfected motion to discharge a committee from the consideration of a measure has once been acted on by the House, it is not in order to entertain during the same session another motion for the discharge of that measure or any other bill or resolution substantially the same as such measure. Rule XXVII clause 3.

§ 3. — Application and Use; What Measures May Be Discharged

Public Bills and Resolutions

The discharge rule has been invoked against standing committees to bring before the House for its consideration various unreported public bills and resolutions, including:

- A joint resolution proposing an amendment to the Constitution, relative to the offering of prayer in public buildings. Deschler Ch 18 § 2.3.
- A joint resolution proposing a constitutional amendment relative to equal rights for men and women. 91–2, July 20, 1970, p 24999.
- A joint resolution proposing an amendment to the Constitution to prohibit compelling the attendance of students at certain schools. 96–1, July 24, 1979, p 20362.
- A bill repealing the tax on oleomargarine. Deschler Ch 18 § 2.1.
- A bill transferring certain price administration functions from one agency to another. Deschler Ch 18 § 2.2.
- A bill providing for the payment to veterans of the face value of their adjusted-service certificates. Deschler Ch 18 § 2.7.

A motion to discharge a committee from the consideration of a bill applies to the bill as referred to the committee and not as it may have been amended in the committee. 7 Cannon § 1015.

Application to Reported Bills

The motion to discharge a bill may not be entertained if the bill against which it is directed has been reported from committee before the motion is called up for action in the House; and the filing of the motion to discharge does not preclude the committee from reporting the measure in question at any time before the motion is called up for consideration. Deschler Ch 18 § 1.13.

Application to Special Orders From the Committee on Rules

Under the modern practice, the rule is most often invoked to discharge the Committee on Rules from the consideration of the resolutions and special rules specified by Rule XXVII clause 3, including a special rule making in order a bill (Deschler Ch 18 § 2.4) or joint resolution (Deschler Ch 18 § 2.5) under terms therein specified by the sponsor of the resolution, rather than under the general rules of the House. For example, in 1965, the House agreed to a motion to discharge the Committee on Rules from the further consideration of a resolution making in order the ''home rule'' bill pending before the Committee on the District of Columbia. 89–1, Sept. 27, 1965, pp 25180–85. In 1982, after the Judiciary Committee had declined to report a balanced budget amendment, and a special order providing for its consideration had been pending before the Rules Committee, a motion to discharge the special order received sufficient signatures and was placed on the Discharge Calendar. Sept. 29, 1982, Discharge Petition 18, on H. Res. 450. A similar motion received the requisite number of signatures in 1992. 102–2, May 20, 1992, p ____.

However, the motion applies only to special orders which have been pending before the Committee on Rules for at least seven legislative days. *Manual* § 908. Moreover, it is not in order to move to discharge the Committee on Rules from the consideration of a resolution not specified in the discharge rule. The Committee on Rules may not be discharged from the further consideration of a resolution providing merely for the appointment of a committee to investigate. Deschler Ch 18 § 2.6.

Timetable

The discharge of a measure pursuant to Rule XXVII clause 3 is subject to the timetable and attendant layovers that are imposed under the rule. The discharge procedure requires:

- Expiration of 30 legislative days after the measure's reference to committee (§ 2, supra) and the concurrent expiration of seven legislative days if the petition is filed against a special order of business referred to the Committee on Rules.
- Expiration of the period needed to obtain the requisite signatures (§ 4, infra).
- Expiration of seven or more legislative days after reference of motion to discharge calendar (§ 6, infra).
- Calling up motion only on second or fourth Monday following expiration of seven-day period (§ 6, infra).

The time frame involved under the rule, lengthy as it is, has sometimes led the House to take other action to dispose of the bill. Thus, in one recent

instance, the House considered and passed, under suspension of the rules, a bill reported by the Committee on the Judiciary after a petition to discharge it had received the necessary signatures, the bill having been reported before the motion to discharge had been on the Discharge Calendar for seven legislative days. 96–2, June 24, 1980, p 16577.

§ 4. — Signatures Required

The provision of the discharge rule that a discharge motion must be signed by a majority of the Members has been interpreted to mean that the motion requires the signatures of a majority of the entire membership (not including non-voting Delegates who may not sign), or 218 Members. See Deschler Ch 18 § 1.2. This requirement is in contrast to the vote needed for actual passage of legislation under ordinary conditions, which requires only a majority of these present and voting, a quorum being present. See VOTING.

The rule requires the preparation of daily cumulative lists of the names of those signing the petition. Such lists must be made available for public inspection. Rule XXVII clause 3 (adopted in 1995).

Additional signatures are not admitted after the requisite number have been affixed. A signature may be withdrawn by a Member in writing at any time before the petition is signed by the requisite number and entered on the Journal. Rule XXVII clause 3. The signing of discharge motions by proxy is not permitted. 7 Cannon § 1014.

The death or resignation of a signatory of the motion does not invalidate his signature (Deschler Ch 18 § 1.5); but to enable a Member elected in a special election to fill a vacancy to sign a petition, the signature of his predecessor must be removed (Deschler Ch 18 § 1.4).

§ 5. — Privilege and Precedence of Motions

Under the modern practice, a motion to discharge a committee, when called up pursuant to the provisions of the discharge rule, is privileged, and the Speaker may decline to recognize for a matter not related to the proceedings. 7 Cannon § 1010. Such motions take precedence over business merely privileged under the general rules of the House. 7 Cannon § 1011. The motion takes precedence over motions to resolve into Committee of the Whole (7 Cannon §§ 1016, 1017), over unfinished business coming over from the preceding day (Deschler Ch 18 § 3.4), and over motions to suspend the rules (7 Cannon § 1018). However, prior to the consideration of a motion to discharge, the Speaker may in his discretion recognize for one-minute speeches (96–1, July 24, 1979, p 20358), or permit a Member to

proceed for one minute on an unrelated matter by unanimous consent (91–2, Aug. 10, 1970, pp 27994–99).

§ 6. — Calling Up and Debating the Motion

Generally

Under the discharge rule, a motion to discharge which has been on the Discharge Calendar at least seven days may be called up for consideration on the second and fourth Mondays of each month except during the last six days of a session. Rule XXVII clause 3. The consideration of such a motion may be made in order on a day other than the specified Mondays by unanimous consent. Deschler Ch 18 § 3.5. In one instance by unanimous consent the House dispensed with the motion to discharge and agreed to consider the underlying matter (a special order) on a date certain under the same terms as if discharged by motion. 102–2, June 4, 1992, p ____.

To call up the motion, a Member must qualify as having signed the discharge petition (89–1, Sept. 27, 1965, pp 25180–85; 92–1, Nov. 8, 1971, pp 39885–89; Deschler Ch 18 § 3.6).

Intervening Motions

The rule of the House providing for the consideration of discharge motions does not permit intervening motions except for one motion to adjourn. Rule XXVII clause 3. Accordingly, it has been held that when a motion to discharge a committee is called up, it is not in order to move to table the motion (Deschler Ch 18 § 3.15) or to move to postpone consideration thereof to a day certain (Deschler Ch 18 § 3.14). And the Speaker has declined to recognize for extensions of remarks where a discharge motion is pending. Deschler Ch 18 § 3.16.

Debate on Motion

Debate on the motion to discharge is limited to 20 minutes—10 minutes in favor of the proposition and 10 minutes under the control of the Member recognized in opposition. *Manual* § 908. The Speaker has denied recognition for requests to extend the time. 7 Cannon § 1010.

The division of the 20-minute period for debate is in accordance with the position of the Member as being either for or against the pending matter, and not according to membership in a particular political party. 7 Cannon § 1010. The proponents of a motion to discharge are entitled to open and close debate on the motion. 7 Cannon § 1010a; Deschler Ch 18 § 3.13. The chairman of the committee being discharged, if opposed, is ordinarily recognized to control the 10 minutes in opposition. 91–2, Aug. 10, 1970, p 27999; 96–1, July 24, 1979, p 20358.

A Member recognized to control half of the 20 minutes' debate on the motion may yield part of his time to another Member (Deschler Ch 18 § 3.11) but that Member may not yield part of that time to still another Member (Deschler Ch 18 § 3.12).

§ 7. — Consideration of Discharged Measure; Forms

Motion to Consider the Discharged Measure

Following agreement to a motion to discharge a standing committee from a measure pending before the committee, it is then in order for any Member who signed the motion to move to proceed to the immediate consideration of that measure. Rule XXVII clause 3. Deschler Ch 18 § 4.3. The motion to consider the measure is privileged and is decided without debate. 91–2, Aug. 10, 1970, pp 27999, 28004; 92–1, Nov. 8, 1971, pp 39885–89. If the motion for immediate consideration is adopted, the legislation is taken up under the general rules of the House. Deschler Ch 18 §§ 4.4, 4.6. Otherwise, the discharged measure is referred to its proper calendar. Deschler Ch 18 § 4.7.

A similar procedure is followed after agreement to a motion to discharge the Committee on Rules from the further consideration of a resolution pending before that committee. The House immediately considers the resolution, the Speaker not entertaining any dilatory or other intervening motion except one motion to adjourn. Rule XXVII clause 3. Deschler Ch 18 § 4. Amendments to the resolution are not in order (unless the previous question is voted down). 78–2, Jan. 24, 1944, p 631. See also *Manual* § 908.

Motions to Expedite Consideration; Debate

A bill having been discharged pursuant to the rule, its proponents are entitled to recognition for allowable motions to expedite consideration of the discharged measure. 7 Cannon § 1012. Measures requiring consideration in Committee of the Whole are taken up therein. 7 Cannon § 1021; Deschler Ch 18 § 4.4. Where the discharged measure does not require consideration in Committee of the Whole, the Member who made the motion for its immediate consideration is recognized in the House under the hour rule. 91–2, Aug. 10, 1970, p 27999; *Manual* § 908. And when a joint resolution proposing an amendment to the Constitution is considered in the House pursuant to a motion to discharge, the proponent of the resolution is recognized to control one hour of debate. 96–1, July 24, 1979, p 20362. Under the modern practice, however, a special order discharged from the Committee on Rules under this procedure specifies all the procedures under which the discharged bill is to be considered.

The bill to which the discharge motion applies is read by title only (Rule XXVII clause 3) and may not be read in its entirety (7 Cannon § 1019a).

The point of order provided by Rule XXI clause 5—interdicting consideration of appropriations not reported by the Committee on Appropriations—does not apply to an appropriation in a bill which has been taken away from the committee by the motion to discharge. 7 Cannon § 1019a; *Manual* § 908.

Forms

MEMBER: Mr. Speaker, pursuant to section 3 of Rule XXVII, I call up the petition to discharge the Committee on _____ from the further consideration of the bill, H.R. _____.

Or

Mr. Speaker, under the rule, I call up the petition to discharge the Committee on Rules from the further consideration of the resolution, H. Res. _____, providing for consideration of the bill, H.R. _____.

SPEAKER: Did the gentleman sign the petition?

MEMBER: I did, Mr. Speaker.

SPEAKER: The gentleman from _____ calls up a motion to discharge the Committee on _____ from the further consideration of the bill [resolution] which the Clerk will report by title.

SPEAKER: The gentleman from _____ is entitled to ten minutes in favor of the motion, and the gentleman from _____ is entitled to ten minutes in opposition. The gentleman from _____ [proponent of the motion] is recognized.

SPEAKER: The time of the gentleman has expired. All time has expired. The question is on the motion to discharge the Committee on _____ from further consideration of the bill (or resolution). As many as favor the motion will say ''Aye.'' As many as are opposed say ''No.''

SPEAKER: The ayes have it and the motion is agreed to. The committee is discharged.

§ 8. Discharge of Matters Privileged Under the Constitution

Certain matters arising under the Constitution are privileged for consideration at any time, and may therefore be discharged at any time irrespective of the requirements for petitions under the discharge rule. Examples include propositions to discipline a Member and impeachment resolutions. See Deschler Ch 18 § 5. Similarly, a motion to discharge a committee from the further consideration of a vetoed bill that has been returned to the House and referred back to committee by the House presents a question of privilege and is in order at any time. Deschler Ch 18 § 5.1. It is likewise in order to move to discharge a proposition involving the right of a Member to his

seat. See discussion in 8 Cannon § 2316. Generally, see QUESTIONS OF PRIVILEGE.

Although a motion to discharge a committee from the consideration of a vetoed bill is privileged (4 Hinds § 3532) and debatable (101–2, Mar. 7, 1990, p ____), that motion is subject to the motion to lay on the table (Deschler Ch 18 § 5.1) but remains renewable on a subsequent day.

§ 9. Discharge of Resolutions of Disapproval; Statutory Motions

Congressional disapproval actions, as expressed in joint, concurrent or simple resolutions, are sometimes made subject, by statute, to a motion to discharge after the lapse of a certain period of time. For various examples, see *Manual* § 1013.

District of Columbia Business

Research References
4 Hinds §§ 3304–3311
7 Cannon §§ 872–880
6 Deschler Ch 21 § 5
Manual §§ 135, 899, 1013(4)
U.S. Const. art. I § 8

§ 1. In General; Constitutional Background

Generally

Under the Constitution, the Congress is empowered to ''exercise exclusive legislation in all cases whatsoever, over [the District of Columbia].'' U.S. Const. art. I § 8. Although the Constitution gives ''exclusive'' jurisdiction to the Congress over such legislation, the Congress is not precluded from delegating its powers over the District to an elective local government. The U.S. Supreme Court has indicated that the ''exclusive'' jurisdiction granted was meant to exclude any question of power by adjoining states over the area and was not intended to prevent an appropriate delegation of legislative authority to the District. *District of Columbia* v *John R. Thompson Company*, 346 US 100 (1946). See also *Stoutengurgh* v *Hennick*, 129 US 141 (1889).

Home Rule

Pursuant to its authority under this constitutional provision, Congress provided in 1970 for the people of the District to be represented in the House by a Delegate and for a Commission to report to the Congress on the organization of the government of the District. Pub. L. No. 91–405. In 1973, Congress passed the District of Columbia Self-Government and Governmental Reorganization Act, also known as the Home Rule Act. It reorganized the governmental structure of the District, provided for a charter for

local government, delegated certain legislative powers to the District, and implemented certain recommendations of the commission. Pub. L. No. 93–198. 87 Stat. 774. As noted below (§ 7, infra), that statute sets forth a procedure for congressional approval or disapproval of certain actions by the District of Columbia Council. See §§ 303(b), 602(c), 604. See also *Manual* § 1013(5). The Home Rule Act reserved to Congress the authority to appropriate by law all federal and local funds for the District of Columbia.

§ 2. Jurisdiction; When District Business is in Order

All measures relating to the municipal affairs of the District, with the exception of appropriation bills, fall within the jurisdiction of the Committee on Government Reform and Oversight. Rule X clause 1(g). The Committee on the District of Columbia was abolished in January 1995. H. Res. 6.

The House rules set apart the second and fourth Mondays in each month for the consideration of District business, if claimed by the committee, to be considered after the disposition of motions to discharge and referral business on the Speaker's table. Rule XXIV clause 8. District of Columbia business is in order on one of the designated Mondays after other more privileged business, such as a motion to suspend the rules, and the fact that the House has considered some District business before such a motion does not affect the eligibility of further such business after suspensions have been completed. 98–2, Sept. 17, 1984, p 25523.

District Day may be transferred to another day not specified in the controlling rule either by unanimous consent or by special order from the Committee on Rules. Deschler Ch 21 § 5.12. Thus, District business has been made in order on the fifth Monday of the month by unanimous consent. 93–2, July 22, 1974, p 24472. The same procedure may be used to permit the consideration of District business on days of the week other than Mondays. 91–2, Dec. 3, 1970, p 39843.

§ 3. Privilege; Precedence

The consideration of District business on the specified days is of qualified privilege only. Deschler Ch 21 § 5. District business yields to:

- Questions as to the privilege of the House. Deschler Ch 21 § 5.3.
- Referral business on the Speaker's table. Deschler Ch 21 § 5; *Manual* § 899.
- Conference reports. 8 Cannon § 3292; Deschler Ch 21 § 5.
- A privileged resolution on the order of business from the Committee on Rules. Deschler Ch 21 § 5.4.
- Motions to suspend the rules. 98–2, Sept. 17, 1984, p 25523.

- Motions to discharge a committee. 7 Cannon § 872; *Manual* § 899.
- Motions to resolve into the Committee of the Whole for the consideration of appropriation bills. 6 Cannon §§ 716–718; 7 Cannon § 876; Deschler Ch 21 § 5.

On a District Day a motion to go into the Committee of the Whole to consider District business and a motion to go into the Committee to consider business generally privileged under a special order are of equal privilege, and recognition to move either is within the discretion of the Chair. 7 Cannon § 877.

§ 4. Consideration; Forms

Procedure

Business reported by committee relating to the District of Columbia is normally taken up for consideration in the House. 87–2, Sept. 24, 1962, pp 20489–521; 91–2, Dec. 3, 1970, p 39843. However, if such business is on the Union Calendar, it may be considered in Committee of the Whole. Deschler Ch 21 § 5.7. Such business may be considered in Committee of the Whole pursuant to motion (Deschler Ch 21 § 5.9), by unanimous consent (Deschler Ch 21 § 5.7), or pursuant to a special order (Deschler Ch 21 § 5.15). Such business has usually been considered by unanimous consent in the House *as in* Committee of the Whole, and this is so whether the bill is on the Union Calendar or the Private Calendar. Deschler Ch 21 §§ 5.7, 5.8.

The question of consideration may not be raised against District business generally, but may be raised against a particular bill when presented. 4 Hinds §§ 3308, 3309.

Private Bills

When reported, private bills relating to the District of Columbia may be called up for consideration on a District Monday. 4 Hinds § 3310; 7 Cannon § 873; Deschler Ch 21 § 5.10. A private bill may also be considered, by unanimous consent, in the House *as in* the Committee of the Whole. 92–2, Apr. 24, 1972, p 14000.

Forms

Union Calendar Bills

MEMBER IN CHARGE: Mr. Speaker, I move that the House resolve itself into the Committee of the Whole House [on the state of the Union] for the [further] consideration of business on the District of Columbia Calendar.

Note: The motion to go into the Committee of the Whole is not debatable, is not subject to amendment, and may not be laid on the table or indefinitely postponed. See COMMITTEES OF THE WHOLE.

And pending that, I ask unanimous consent that general debate be limited to _____ hours, one-half to be controlled by the gentleman from _____, Mr. _____, and one-half by myself.

Note: General debate in the Committee of the Whole may be limited and divided in the House by unanimous consent, but a motion to limit such debate is not in order until after general debate has begun and the Committee rises. See CONSIDERATION AND DEBATE.

In the House as in Committee of the Whole

SPEAKER: This is District of Columbia day. The Chair recognizes the gentleman from _____, chairman of the Committee on Government Reform and Oversight.

MEMBER: Mr. Speaker, by direction of the Committee on Government Reform and Oversight, I call up the bill (H.R._____) to _____.

SPEAKER: The Clerk will report the title to the bill.

MEMBER (*after the reading*): I ask unanimous consent that the bill be considered in the House as in Committee of the Whole.

§ 5. — Debate

Members of the committee with jurisdiction over District of Columbia business have precedence in recognition for debate on days claimed by that committee for the consideration of District business. 7 Cannon § 875. General debate in the Committee of the Whole is under the hour rule unless otherwise provided by the House or the Committee. 7 Cannon § 874; Deschler Ch 21 § 5.7 (note). Such debate properly alternates between those favoring and those opposing the pending proposition. Debate is general debate and is not confined to the bill under consideration. 7 Cannon § 875. Where the bill is considered in the House *as in* Committee of the Whole, as is usually the case by unanimous consent, there is no general debate; the bill is considered as read and debate and amendments proceed immediately under the five-minute rule (see COMMITTEES OF THE WHOLE).

§ 6. Disposition of Unfinished Business

District business that is unfinished on a day assigned to the committee with jurisdiction normally goes over to the next eligible day for that committee. 4 Hinds § 3306. Accordingly, unless the previous question has been ordered, unfinished business on District Day does not come again before the

House until the next District Day (Deschler Ch 21 § 5.13), at which time it must be affirmatively called up by the Member in charge. Deschler Ch 21 § 5.14. Unfinished business on one District Day does not come up on the next District Day unless called up by the committee. 4 Hinds § 3307; 7 Cannon §§ 879, 880; *Manual* § 899.

§ 7. Procedure Under Home Rule Act

Under the District of Columbia Home Rule Act, the Congress retains control over amendments to the District of Columbia Charter. *Manual* § 1013(5). An amendment to the District of Columbia Charter is deemed repealed if within 35 days a joint resolution disapproving such amendment is enacted. See § 303(b) of the Act. Likewise, the enactments of the District of Columbia Council, with certain exceptions, are deemed repealed if the Congress within a specified period enacts a joint resolution in disapproval thereof. § 602(c). In the House, such resolutions are referred to the Committee on Government Reform and Oversight. § 604(c). A privileged motion to discharge that committee is authorized under certain circumstances where matters affecting the District of Columbia Criminal Code are involved. The motion is debatable under the hour rule. § 604(d), (e). The motion is privileged if made after the 20-day period specified by the Home Rule Act. 97–1, Oct. 1, 1981, pp 22752–22767; 100–1, Oct. 14, 1987, p 27847.

The present Home Rule Act requires that congressional disapproval be expressed in a joint resolution (a concurrent resolution was formerly permitted). 94–2, Sept. 22, 1976, p 30748. For a discussion of the validity and constitutionality of resolutions of disapproval, see CONGRESSIONAL DISAPPROVAL ACTIONS.

Disapproval resolutions are considered in the House unless the enactment in question affects the U.S. Treasury, in which case they are considered in the Committee of the Whole. See 96–1, Dec. 20, 1979, p 7303.

When the Oversight Committee has reported the resolution, or has been discharged from its consideration, it is in order to move to consider the resolution. This motion is highly privileged and is not debatable or amendable. § 604(g). Debate on the resolution is limited to not more than 10 hours, to be equally divided. Motions to further limit debate are permitted but are themselves not debatable. The resolution is not subject to amendment or recommittal. § 604(h). Motions to postpone or to proceed to the consideration of other business are not debatable. § 604(i).

Division of the Question for Voting

Research References
5 Hinds §§ 6106–6162
8 Cannon §§ 3163–3176
Manual §§ 480–482, 791–793

A. Generally

§ 1. In General; Form

A question which consists of two or more separable substantive propositions is subject to a division of the question, if demanded (Rule XVI

clause 6) so as to obtain a separate vote on each proposition. 89–1, Aug. 18, 1965, p 20948; 95–1, Mar. 31, 1977, p 9847. The procedure is applicable in the House as well as in the Committee of the Whole. 89–1, Aug. 18, 1965, p 20948; 93–2, Apr. 4, 1974, pp 9849, 9854, 9855. Clause 6 provides:

> On the demand of any Member, before the question is put, a question shall be divided if it includes propositions so distinct in substance that one being taken away a substantive proposition shall remain. . . .

The rule contains provisos barring its application to special orders of business from the Committee on Rules or to propositions electing Members to standing or joint committees. *Manual* § 791. The entire rule may be suspended by the adoption of a resolution from the Committee on Rules. 7 Cannon § 775.

§ 2. Tests of Divisibility

To be divided for a vote, a question must consist of at least two separate and distinct propositions (94–1, Dec. 4, 1975, p 38717; 94–2, Sept. 9, 1976, p 29538) both grammatically and substantively, so that if one proposition is rejected a separate proposition will logically remain. See 94–1, Mar. 20, 1975; 94–2, May 26, 1976, p 15506. Either one being taken away a substantive proposition must remain upon which action can be taken by the House. 8 Cannon § 3165. In passing on a demand for division the Chair considers only the severability of the propositions and not the merits of the question presented. 5 Hinds § 6122.

The requirement that there must be at least two substantive propositions in order to justify division is strictly enforced. 5 Hinds §§ 6108–6113. If either proposition, standing alone, is not a distinct substantive proposition, the question is not divisible even though each portion is grammatically complete. 7 Cannon §§ 3165, 3167. However, in dividing a question into separate propositions, some restructuring of the language used is in order. 5 Hinds §§ 6114–6118; *Manual* § 792.

§ 3. Demanding a Division

A request for a division of the question does not require unanimous consent. 94–1, June 19, 1975, p 19767. No motion is made. 98–1, Nov. 8, 1983, p 31477. The Member seeking a division rises and addresses the Chair:

> MEMBER: Mr. Speaker, I demand a division of the question.
> SPEAKER: The gentleman will indicate the proposition(s) on which he desires a separate vote. . . .

SPEAKER: The gentleman requests a division, and that portion of the amendment will be divided for a separate vote.

[*Or*]

OPPONENT: Mr. Speaker, I make the point of order that the question is not susceptible of division, and that the portions indicated by the gentleman do not constitute separate substantive propositions.

SPEAKER: The Chair will hear the gentleman.

A demand for a division of a question is in order after the previous question has been ordered. 5 Hinds §§ 5468, 6149; 8 Cannon § 3173. Under Rule XVI clause 6, the demand for a division is in order before the question is put to the House for a vote. 94–1, Dec. 4, 1975, p 38717; 94–2, Sept. 9, 1976, p 29538. The question may not be divided after it has been put (5 Hinds § 6162) or after the yeas and nays have been ordered (5 Hinds §§ 6160, 6161). The demand is likewise untimely if the question is one against which a point of order has been raised and is pending. 8 Cannon § 3432.

A demand for a division of the question may be withdrawn; but this is permitted only by unanimous consent once the Chair has put the question on the first portion to be voted on. 94–2, Sept. 9, 1976, p 29540.

B. Division of Particular Propositions

§ 4. In General

Generally; Distinction Between Bills and Resolutions

Whether a division of the question may be demanded depends on the nature of the pending matter and on whether it meets the tests of divisibility (§ 2, supra) imposed by Rule XVI. Certain House resolutions—whether simple or concurrent—are subject to the demand when the question is put on agreeing thereto (§ 5, infra); but bills and joint resolutions are not divisible on passage. A separate vote may not be demanded on various provisions set forth in such a measure (5 Hinds §§ 6144–46; 8 Cannon § 3172) or on its preamble (5 Hinds § 6147). Certain amendments, such as a compound motion to strike (§ 10, infra) can be divided; but most other motions are not divisible.

A motion for the previous question on a proposition and an amendment thereto is not divisible. Rule XVII clause 1; 101–2, Sept. 25, 1990, p ____. However, when the previous question is ordered on a measure and a pending amendment, the vote comes first on the amendment, then on the text as perfected or not. And when the previous question has been ordered on adoption of a measure containing a series of simple resolutions, they may be divided for a vote on demand. 5 Hinds § 6149.

The question of engrossment and third reading of a bill under Rule XXI clause 1 is not subject to a demand for a division of the question. Under that clause engrossment and third reading is stated as one question and if divided would not present two separate substantive propositions under the rules of the House. 101–1, Aug. 3, 1989, p ____.

Appeals

There may be a division of the question on an appeal from a decision of the Speaker if the decision involves two or more separate and distinct questions. 5 Hinds § 6157.

§ 5. Simple or Concurrent Resolutions

A simple or concurrent resolution may be subject to a demand for a division of the question if it satisfies the test of divisibility imposed by Rule XVI (see § 2, supra). Thus, a concurrent resolution on the budget is subject to a demand for a division of the question if the resolution grammatically and substantively relates to different fiscal years (96–2, May 7, 1980, pp 10185–87), or includes a separate, hortatory section having its own grammatical and substantive meaning (102–2, Mar. 5, 1992, p ____). It is in order to demand a division of the question on agreeing to an impeachment resolution so as to obtain a separate vote on each article. 6 Cannon § 545.

To be subject to a demand for a division of the question, a resolution must present two or more separate and distinct substantive propositions. It has been held that a resolution (1) censuring a Member and (2) adopting the committee report recommending such censure on the basis of the committee's findings, is not divisible since these questions are substantially equivalent. 95–2, Oct. 13, 1978, p 37009. An adjournment resolution which also authorizes the receipt of veto messages from the President during the adjournment is not subject to a division of the question, as the receipt authority would be nonsensical standing alone. 94–2, June 30, 1976, p 21702.

It is not in order to demand a division of the question on matters that are merely incorporated by reference in the pending resolution. For example, when a resolution to adopt a series of rules, referred to but not made a part of the resolution, is before the House, it is not in order to demand a separate vote on each rule. 5 Hinds § 6159.

§ 6. — Resolutions Naming Two or More Individuals

While a resolution electing Members to standing or joint committees is not divisible (clause 6, Rule XVI), other types of resolutions relating to two or more named individuals may be divided for the purpose of voting. 94–

1, Mar. 19, 1975, p 7344. Thus, a resolution confirming the nomination of certain individuals to executive branch offices is subject to a division of the question so as to obtain a separate vote on each nominee. 94–1, Mar. 19, 1975, p 7344.

A resolution relating to two or more named individuals may be divided even though that may require a grammatical reconstruction of the text. 5 Hinds § 6121. A word that is a mere formality, such as ''resolved,'' is sometimes supplied by interpretation of the Chair. 5 Hinds §§ 6114–6118. However, a contempt resolution certifying three persons in one resolve clause has been held not divisible. 74–2, May 28, 1936, p 8220. Recent practice suggests that in such cases separate resolve clauses be drafted for inclusion in the resolution. 99–2, Feb. 27, 1986, pp 3050, 3061.

§ 7. — Special Orders

Resolutions reported from the Committee on Rules providing a special order of business are not divisible, since a division of such questions is prohibited by Rule XVI clause 6. *Manual* § 792. However, other types of special rules from the committee are subject to a demand for a division where the resolution contains separate and distinct substantive propositions as required by Rule XVI. (Tests of divisibility, see § 2, supra.) For example, a resolution reported from that committee establishing two or more select committees is subject to a demand for a division of the question. 100–1, Jan. 8, 1987, p 1036.

§ 8. Amendments

Generally

Rule XVI clause 6 permits a division of the question on an amendment on the demand of any Member where the amendment is properly divisible into two or more substantive propositions. 93–2, Apr. 4, 1974, pp 9849, 9854, 9855. A division is in order before the Chair puts the question on the amendment if the amendment contains propositions so distinct in substance that one being taken away, a substantive proposition remains. 98–1, Nov. 8, 1983, p 31494. Thus, an amendment offered to an appropriation bill, providing that no part of the appropriation may be paid to named individuals, may be divided for a separate vote on each name. 78–1, Feb. 5, 1943, p 645.

Amendments Taken Up in Committee of the Whole

The rule permitting a division of the question (Rule XVI clause 6) is applicable to an amendment consisting of two or more substantive propo-

sitions under consideration in the Committee of the Whole. 89–1, Aug. 18, 1965, p 20948; 93–2, Apr. 4, 1974, pp 9849, 9854, 9855. A request for a division of the question on such an amendment may be made in the Committee at any time before the Chair puts the question thereon. 5 Hinds § 6162; 97–1, Oct. 21, 1981, p 24785. However, an amendment reported to the House from the Committee of the Whole as an entire and distinct amendment is not subject to a division of the question in the House. 4 Hinds §§ 4883–4892. A separate vote may not be demanded in the House on an amendment adopted in the Committee to an amendment unless specifically permitted by special order. 8 Cannon §§ 2422, 2426, 2427; *Manual* § 792. Generally, see COMMITTEES OF THE WHOLE.

Perfecting Amendments; Substitute Amendments

An amendment adding language to the pending text is divisible if the language to be added contains two or more distinct propositions. 5 Hinds §§ 6129, 6133. However, a substitute amendment is not subject to a demand for a division of the question. 5 Hinds § 6127; 8 Cannon § 3168; 96–2, July 2, 1980, p 18292. The division of a motion to strike out and insert is precluded by House rule. § 11, infra.

A division of the question may be demanded on an amendment before amendments are adopted thereto, or on the amendment as amended (assuming that perfecting amendments or an adopted substitute do not destroy the divisibility of the amendment as amended). 95–1, Oct. 19, 1977, p 34259.

A negative vote on a motion to strike out a portion of a pending amendment does not prevent a demand for a division of that portion of the amendment if it is a separate proposition and therefore properly severable. 89–1, Aug. 18, 1965, p 20956.

§ 9. — En Bloc Amendments

Consideration of several amendments en bloc by unanimous consent or otherwise does not prevent a division of the question from being demanded so as to obtain a separate vote on one of the amendments. 96–1, Dec. 14, 1979, p 36194. 102–1, July 18, 1991, p ____. In fact, a Member may be permitted to offer several amendments en bloc and then demand a division of the question for a separate vote on each one. 89–2, June 9, 1966, p 12881. However, amendments en bloc proposing only to transfer appropriations among objects in a general appropriation bill (without increasing the levels of budget authority or outlays in the bill), when considered en bloc pursuant to Rule XXI, are not subject to a demand for division of the question in the House or in the Committee of the Whole. Clause 2(f) (adopted in 1995).

§ 10. Motions to Strike

A motion striking out various unrelated propositions may be divided for purposes of voting. 8 Cannon § 3166; 98–2, Mar. 28, 1984, p 6898. Thus, an amendment proposing to strike out two or more sections of a pending amendment may be divided in order to obtain separate votes on the proposal to strike out each section. 93–2, July 25, 1974, pp 25238, 25239. However, an amendment proposing to strike out a provision in a bill—and to redesignate subsequent paragraphs accordingly—is not subject to a demand for a division, since it contains only one substantive proposition. 93–2, Dec. 10, 1974, p 38746.

§ 11. Motions to Strike and Insert

Although a motion to insert may be divisible (§ 8, supra), the division of a motion to strike out and insert is precluded by Rule XVI clause 7. *Manual* § 793. The indivisibility of a motion to strike and insert under clause 7 of Rule XVI operates not only between the branches of the motion but also within each branch. 8 Cannon § 3169. See also 5 Hinds § 6124.

A simple motion to strike may not be offered as a substitute for a motion to strike certain words and insert others, as that would have the effect of dividing the motion to strike out and insert. *Manual* § 793.

§ 12. Motions to Suspend the Rules

A question being considered pursuant to a motion to suspend the rules may not be divided for a vote. 5 Hinds §§ 6141–6143; 8 Cannon § 3171. Although a proposition may be subject to a division of the question under Rule XVI, it cannot be divided if Rule XVI is suspended. 5 Hinds § 6143. Generally, see SUSPENSION OF RULES.

§ 13. Motions to Recommit

A motion to recommit with instructions is not subject to a demand for a division of the question. It is not in order to demand a separate vote even where the motion includes separate branches of instructions to the reporting committee. 5 Hinds §§ 6134–6137; 8 Cannon § 3170; *Manual* § 792. However, an amendment reported forthwith pursuant to instructions contained in a successful motion to recommit may be divided on the question of its adoption if composed of substantially and grammatically distinct propositions. 103–1, June 29, 1993, p ____.

Instructions in a motion to recommit a conference report may not be divided (103–2, Sept. 29, 1994), but a division has been permitted where

multiple motions are in order pursuant to Rule XXVIII clause 1(c), the conferees having failed to report for 20 calendar days. 74–2, May 26, 1936, p 7951.

§ 14. Motions to Table

Since a motion to lay on the table is a summary motion, its only purpose being to defeat the pending proposition, it has been held that the motion to table is not subject to a demand for a division of the question. 5 Hinds § 6140. A division of the question is not in order even if the motion is applicable to two or more separate and distinct propositions, such as a series of resolutions. 5 Hinds § 6138. A motion to table a resolution and pending amendments is likewise indivisible. 5 Hinds §§ 6139, 6140.

§ 15. Senate Amendments

Generally; Motions to Concur

On the question of agreeing or disagreeing to a Senate amendment, it is not in order to demand a division so as to vote separately on different portions of the amendment. 5 Hinds §§ 6151, 6156. The amendment must be voted on as a whole. 8 Cannon § 3175. However, when two or more Senate amendments are considered in the House, a separate vote may be had on each amendment. 8 Cannon §§ 2383, 2400, 3191. After the stage of disagreement House rules permit separate votes on nongermane portions of Senate amendments. Rule XXVIII clause 5. See GERMANENESS OF AMENDMENTS.

Motions to Concur With an Amendment

A House amendment proposed in a motion to concur in a Senate amendment with an amendment is divisible if the proposed House amendment is in divisible form. 98–2, Oct. 11, 1984, p 32188. But such a motion may not be divided between concurring and amending. 8 Cannon § 3176. A motion to concur with an amendment adding a new provision to a Senate amendment may not be divided where that provision is not itself divisible substantively and grammatically under the same tests that apply to any other amendment. 93–1, Aug. 3, 1973, pp 28124–26; 98–2, Oct. 11, 1984, p 32188. Tests for divisibility, see § 2, supra.

A proposed House amendment to a Senate amendment is not divisible if the House amendment is in the form of a motion to strike out and insert (99–2, Oct. 15, 1986, p 32135), as such motions are specifically indivisible under House rule (§ 11, supra).

Motions to Recede and Concur

A division may be demanded on a motion to recede from disagreement and concur in a Senate amendment. 5 Hinds § 6209; 8 Cannon §§ 3197–3199. The question having been divided and the House having receded, a motion to amend takes precedence over the motion to concur (5 Hinds §§ 6209–6211; 8 Cannon § 3198), even after the previous question has been ordered on both motions (*Manual* § 525).

C. Consideration of Divided Propositions

§ 16. In General

Amendment and Debate; Putting the Question

Where a division of the question has been demanded on separable portions of a proposition subject to amendment, an amendment to any of those portions may be offered until the Chair puts the question on the first portion. 94–2, Sept. 9, 1976, p 29530. After a vote has been taken on the first portion, the second is open to debate and amendment unless the previous question is ordered. *Manual* § 792.

Where a division of the question is demanded on a separable portion of an amendment, the Chair puts the question first on the remaining portion of the amendment, and that portion on which a division is demanded remains open for further debate and amendment. *Manual* § 482. If a division of the question is demanded on more than one portion of an amendment, the Chair puts the question first on the unaffected portions of the amendment (if any), then (after further debate) on the first part on which a division is requested, and then (after further debate) on the subsequent divisible portions. 97–1, Oct. 21, 1981, p 24789. Where neither portion of a divided question remains open to further debate or amendment, the question may be put first on the portion identified by the demand for division and then on the remainder. 104–1, June 8, 1995, p ____.

Voting

A question having been divided for a vote, the vote may be taken by one of the voting methods authorized by the House rules, such as a voice vote or recorded vote. See VOTING. In the House, a motion to reconsider the vote will lie, but a separate motion to reconsider must be offered with respect to each proposition voted on. 5 Hinds § 5609.

Election Contests and Disputes

Research References
1 Hinds §§ 634–755
6 Cannon §§ 90–189
2 Deschler Ch 9
U.S. Const. art. I § 5
Manual § 680a

§ 1. In General

Contests for seats in the House are governed by the Federal Contested Elections Act. 2 USC §§ 381 *et seq*. This statute, enacted in 1969, sets forth the procedure by which a defeated candidate may have his claim to a seat adjudicated by the House. The act provides for the filing of notice of contest and other proceedings, for the taking of testimony of witnesses, and for a House Oversight committee hearing on the depositions and other papers that have been filed with the Clerk. 2 USC §§ 381–396. Acting on committee reports, the House, by resolution, then disposes of the case. See § 4, infra.

The grounds on which an election contest may be based and the defenses available to the contestee, as well as the taking of testimony and other procedures followed in determining the contest in committee, are treated elsewhere. See Deschler Ch 9 and Ch 9 Appendix for complete treatment of contested election cases beginning in the 65th Congress in 1917.

Notwithstanding the availability of the statutory election contest procedures discussed herein, some election disputes have been presented directly to the House for consideration and committee investigation. See for example

H. Rept. No. 99–58 (1985). An investigation of a challenged election has been initiated pursuant to:

- Action by the House in directly referring the question of a Member-elect's right to a seat to the Committee on House Oversight (Deschler Ch 2 § 6).
- A protest filed by an elector of the district concerned (Deschler Ch 9 § 17.1).
- A memorial filed by another person challenging the qualifications of the Member-elect (Deschler Ch 9 § 17.3).

The latter two procedures have been rarely invoked, however, and they preceded the adoption of the modern contested election statute.

The right to a seat in the House may also be affected by House action on a motion to expel, where a sitting Member's behavior or conduct is at issue. Such motions are discussed elsewhere in this work. See MISCONDUCT; SANCTIONS.

§ 2. Jurisdiction and Powers

Generally

The Constitution authorizes each House to be the judge of the elections, returns, and qualifications of its Members. U.S. Const. art. I § 5. Thus, the House is entitled to judge contested elections involving its seats, and is not bound by agreement of the parties or decisions of state tribunals. 6 Cannon §§ 90–92. The determination by the House as to the right to the seat is final, this being considered a nonjusticiable political question. Roudebush *v* Hartke, 405 US 15 (1972).

Pursuant to the contested election statute, the House acquires jurisdiction of an election contest upon the filing of a notice of contest by a defeated candidate. Deschler Ch 9 § 4.1. Ordinarily, the papers relating to the contest are transmitted by the Clerk to the Committee on House Oversight [formerly House Administration] pursuant to the statute (2 USC § 393(b)), without formal referral or other action by the House (Deschler Ch 9 § 4), that committee having jurisdiction of election contests under the House rules. Rule X clause 1(h)(12). However, the House itself may initiate an election investigation if a Member-elect's right to take the oath is challenged by another Member, by referring the question to the committee. Deschler Ch 2 § 6. The House may also summarily dismiss a contest by the adoption of a resolution providing therefor. Deschler Ch 9 §§ 4.4, 4.5.

Where two persons claim the same seat from the same district, the House may refuse to permit either candidate to take the oath pending a determination of their rights by the House. Deschler Ch 9 § 4.3.

Election contests may be investigated by a special committee or by subcommittees of the Committee on House Oversight (Deschler Ch 9 §§ 5.2–5.4), or by *ad hoc* panels. See, for example, 95–1, May 9, 1977, p 13953.

Recounts of Votes

To obtain an order from the House for a recount of votes in an election contest, the contestant should show that he has exhausted state court remedies to secure a recount under state law (Deschler Ch 9 § 41.1), and that evidence and testimony have been taken in the matter (Deschler Ch 9 § 41.3). Although the committee with jurisdiction has authority to require a recount of votes for a contested seat in the House, the committee has declined to order such a recount where the highest court of the state has conducted a recount and where the contestant does not demonstrate that a recount would change the result of the election. 96–2, Mar. 4, 1980, pp 4490, 4491.

§ 3. Parties

Under the controlling statute, ''a candidate for election'' to the House ''in the last preceding election'' is given the right to initiate a contest by filing the notice required by law. 2 USC § 382a. The statute defines ''candidate'' to mean one whose name was on the official ballot or who received write-in votes under certain conditions. 2 USC § 381b. Thus, a candidate in the primary whose name was not on the ballot in the general election lacks the requisite standing to initiate a contest, and this was true even under the former contested election statute. Deschler Ch 9 § 19; 90–1, July 11, 1967, p 18290. Similarly, the House has dismissed a contest filed by one who was a candidate in a special election to fill a vacancy but not a candidate in the run-off election. 95–1, Oct. 27, 1977, p 35408.

A lack of standing of contestant to initiate the contest is a defense which may be raised, at the option of the contestee, by motion. 2 USC § 383(b).

§ 4. Consideration and Disposition

Precedence and Privilege

Under the Constitution (art. I § 5) and Rule XI clause 4(a), the consideration of a contested election case is of high privilege (3 Hinds §§ 2579, 2580), and takes precedence over the consideration of veto messages from the President (5 Hinds §§ 6641, 6642), questions of privilege (3 Hinds § 2626), special orders (3 Hinds § 2554), and business in order on Calendar Wednesday (8 Cannon § 2276).

Resolutions and Reports

The House generally disposes of election contests by acting on a resolution which, under the modern practice, is reported from the Committee on House Oversight. See 95–1, May 9, 1977, pp 13953, 13954 (dismissing several cases); 96–2, Mar. 4, 1980, p 4491. A resolution is used to dispose of the case even where dismissal has been agreed to by the parties pursuant to a stipulation. Deschler Ch 9 § 52.5.

Committee reports relating to the right of Members to their seats are privileged and are so reported from the floor. Rule XI clause 4(a); 87–1, June 13, 1961, p 10160; 90–1, June 14, 1967, p 15858. Resolutions disposing of an election contest are also privileged and may be called up any time (Deschler Ch 9 § 42.3; 86–1, Sept. 8, 1959, p 18610; 89–1, Sept. 17, 1965, p 24263), even though not reported from committee (Deschler Ch 9 § 42.4).

The resolution may:

- Declare one of the parties entitled to the seat. Deschler Ch 9 § 42.2; 90–1, July 11, 1967, p 18291; 99–1, Apr. 30, 1985, p 9801.
- Declare one of the parties to be not competent to bring the contest. 89–1, Jan. 19, 1965, pp 951–957.
- Declare that neither party be admitted to the seat pending a committee investigation. Deschler Ch 9 § 42.15; 99–1, Jan. 3, 1985, p 381.
- Declare the seat vacant. Deschler Ch 9 §§ 42.11, 42.12.
- Dismiss the contest. See § 5, infra.
- Provide for payment or reimbursement from the contingent fund for costs incurred in the contest or its investigation. Deschler Ch 9 §§ 45.1–45.6; 87–1, June 14, 1961, p 10391. See also 2 USC § 396, permitting the committee to allow any party reimbursement for reasonable expenses in the case.

§ 5. — Dismissal

A motion to dismiss will lie under the Federal Contested Elections Act to permit the contestee to interpose certain defenses to the contestant's claim or notice of contest. 2 USC § 383b. Such a motion is acted on by the House pursuant to a privileged resolution reported from the Committee on House Oversight. See 95–1, May 9, 1977, p 13953; 96–2, Mar. 4, 1980, p 4491.

Under this statute, the burden of proof is on the contestant to present sufficient evidence, even prior to the formal submission of testimony, to overcome the motion to dismiss. Deschler Ch 9 § 35.7; 95–1, May 9, 1977, pp 13953, 13954; 99–1, July 24, 1985, p 20180. A motion to dismiss will lie where the contestant has not adduced evidence or forwarded testimony in the manner prescribed by law (Deschler Ch 9 §§ 25.1–25.5) or fails to demonstrate that there is some documentable basis for his allegations (96–

1, Mar. 29, 1979, pp 6832, 6833). Under the statute, the contestant has the burden of proving sufficient evidence to show that the result of the election would be changed (95–1, May 9, 1977, p 13954), or that the House should conduct a complete recount (99–1, Oct. 2, 1985, p 25665). Evidence that the contestant received more votes than the contestee in a *prior* election is insufficient. 95–1, Oct. 27, 1977, p 35408. Merely suggesting the probability of error in the tabulation of votes, without offering evidence of a change in the election result, is likewise insufficient. 95–1, May 9, 1977, p 13954.

§ 6. — Debate and Voting; Amendment

Generally

Resolutions disposing of election contests have been determined by voice vote and without debate. Deschler Ch 9 § 42.5. Normally, however, debate on the resolution is under the hour rule, with extensions of time permitted by unanimous consent. The debate may be divided among certain Members, with the previous question to be considered as ordered at the conclusion thereof. Deschler Ch 9 § 42.9; 87–1, June 14, 1961, p 10371. The Member supporting the recommendation of the committee majority in the contest is entitled to close debate. Deschler Ch 9 § 42.8.

The resolution may be subject to demand for a division of the question if its form permits (Deschler Ch 9 § 42.14) and to a motion to recommit with instructions (Deschler Ch 9 § 42.16). If the manager of the resolution yields for an amendment, he loses the floor to the proponent of the amendment. 89–1, Sept. 17, 1965, p 24290. The resolution is not subject to a substitute amendment therefor unless the Member controlling the time for debate yields for that purpose or unless the previous question is voted down. Deschler Ch 9 § 42.17.

Participation by the Parties

The parties to an election contest may be permitted on the floor (under Rule XXXII) during the consideration of the case in the House. Deschler Ch 9 § 42.6; 89–1, Sept. 17, 1965, p 24267.

A contestee, as a sitting Member, may participate in debate on the resolution disposing of the contest (Deschler Ch 9 § 42.7) or insert remarks in the Record (89–1, Sept. 17, 1965, p 24285), and he may vote on the resolution (99–1, Oct. 2, 1985, p 25670).

Election of Members

Research References
1 Hinds §§ 277–633
6 Cannon §§ 38–89
2 Deschler Ch 8
U.S. Const. art. I § 5 clause 1

§ 1. In General

Generally

Although Congress has enacted extensive legislation to protect the right to vote and to secure the process against fraud, bribery, and illegal conduct, the actual mechanism for conducting and holding congressional elections has been left largely to the states. Deschler Ch 8 §§ 5, 7. However, under the Constitution, the ultimate validity of elections rests on determinations by the House and Senate as final judges of the elections and returns of their respective Members (U.S. Const. art. I § 5 clause 1). Deschler Ch 8 § 5. Therefore, where the conduct of election officials or of candidates and their agents constitutes fraud or illegal control of election machinery, the House or Senate may void an election and refuse to administer the oath to a Member-elect. Deschler Ch 8 § 7. See Deschler Ch 8 for complete treatment of elections and election campaigns.

Apportionment and Reapportionment

Since the admission of Alaska and Hawaii to statehood, the total membership of the House has remained fixed by statute at 435 seats. *Manual* § 227. By law, these 435 seats are automatically apportioned among the states according to each decennial census. 2 USC § 2a. Under this law, a statistical model known as the ''method of equal proportions'' is used to determine the number of Representatives to which each state is entitled. While other methods for apportioning House seats may be permitted, Congress' choice of the equal proportions method has been upheld under the Constitution and was plainly intended to reach as close as practicable to the goal of ''one person, one vote.'' *Com. of Mass.* v *Mosbacher, D. Mass.*,

785 F Supp 230 (1992), reversed on other grounds 112 S. Ct. 2767. The method of apportioning the seats in the House is vested exclusively in Congress and neither states nor courts may direct greater or lesser representation than that allocated by statute. Deschler Ch 8 § 1.

Reapportionment proposals have been considered in the House, but have no privileged status under the Constitution and cannot interrupt the regular proceedings of the House. Deschler Ch 8 § 2. Reapportionment legislation has also been considered in the Committee of the Whole. Deschler Ch 8 § 2.5. Proposals relating to apportionment are within the jurisdiction of the Committee on the Judiciary. *Manual* § 679a.

§ 2. Campaign Practices

The power of Congress to regulate the election process extends to the regulation of campaign practices. Deschler Ch 8 § 10. The Federal Election Campaign Act established a new and comprehensive code for campaign practices and expenditures, and contains provisions for investigations and enforcement. 2 USC §§ 431 *et seq*.

The Federal Election Commission is the agency of U.S. government empowered with primary jurisdiction with respect to administration, interpretation and civil enforcement of the Federal Election Campaign Act. *Federal Election Com'n* v *American Intern. Demographic Services, Inc.*, 629 F Supp 317 (1986). But the House itself has the power to judge elections and to determine whether a candidate was improperly elected to a seat. If violations of the election campaign statutes are so extensive as to render an election void, the House may deny the right to a seat. Deschler Ch 8 § 12.

The Committee on House Oversight has general jurisdiction over measures relating to the election of the President, Vice President, or Members of Congress and over measures relating to the raising, reporting, or use of campaign contributions for House candidates. Rule X clause 1(h). Investigations of specific elections or election practices are usually undertaken pursuant to committee action. (See, for example, 99–1, Apr. 30, 1985, p 9801 [ballot recount].) Investigations of Members' elections may be conducted under the statutory election-contest procedures (see ELECTION CONTESTS AND DISPUTES), or pursuant to a privileged resolution reported from the Committee on Rules (93–2, Aug. 21, 1974, p 29653) or offered on the floor of the House as questions of privilege. *Manual* § 662. However, investigations have also been undertaken by select committees created to review election campaigns and proceedings. Such committees have been created by privileged resolution reported from the Committee on Rules. 92–2, Feb. 28, 1972, p 5717; 93–1, Jan. 15, 1973, p 1058; 93–1, Mar. 15, 1973, p 7957.

A Member's resignation during the investigation effectively terminates the investigation, since the Committee on House Oversight (formerly House Administration) has no further jurisdiction in the matter thereafter. See 95–1, May 4, 1977, p 13391.

A resolution from the Committee on House Oversight relative to the right of a Member to his seat, after investigation of his campaign, is reported and considered as privileged. See Rule XI clause 4(a); Deschler Ch 8 § 13.5. See also 99–1, Apr. 30, 1985, p 9801.

§ 3. Certificates of Election

Certificates of election are issued by each state after congressional elections have been conducted and the results tabulated. The certificates, also termed ''credentials'' are sent to the Clerk of the House for use in composing the Clerk's roll. While the certificate is not essential to the administration of the oath, any Member or Member-elect has the right to object thereto, by delivering a challenge either to the validity of the election or to the validity of the certificate itself. Deschler Ch 8 § 15. Challenging the administration of the oath, see OATHS.

The House (and not the Speaker or other official) determines whether a Member may be sworn in after an election certificate has been challenged. If a challenge has been directed to a mere irregularity in the form of the certificate, the House will ordinarily seat the Member-elect and declare him finally entitled to the seat. See Deschler Ch 8 § 17.1. But if a certificate is challenged through an election contest or by the allegation of election irregularities, the House may authorize the Member-elect to be sworn but provide that his final right to the seat be referred to committee. That procedure is often followed where a certificate is on file in order not to deprive a state of representation in the House resulting from protracted proceedings. Deschler Ch 8 § 16.4. Still another procedural option that may be pursued by the House is for it to declare that neither candidate be sworn and that the question of *prima facie* and final right to the seat be referred to committee. 99–1, Jan. 3, 1985, p 381.

A circumstance which may require the nullification of a certificate is the intervening death or disappearance of the Member-elect named therein. 93–1, Jan. 3, 1973, pp 15, 16.

The House does not always require a certificate in seating a Member-elect. If he appears without a certificate but his election is uncontested and unquestioned, the House may authorize him to be sworn by unanimous consent. 92–1, May 27, 1971, p 17231; 97–1, July 28, 1981, p 17686. A photographic copy of the original certificate has been accepted without invoking

the unanimous-consent procedure. 97–1, July 9, 1981, p 15215. In some cases where a certificate is delayed, the state of representation will deliver informal communications to the House attesting to the validity of the election of the Member-elect; the House may accept such communications in the absence of a certificate. 88–1, Oct. 30, 1963, p 20612; 89–2, Mar. 30, 1966, p 7219; 95–2, Feb. 21, 1978, p 3852. Even where a Member-elect arrives without a certificate and his election is disputed, the House may by resolution authorize him to be sworn in. Deschler Ch 8 § 17.2.

§ 4. Resignations; Filling Vacancies

A Member properly submits his resignation to an official designated by state law and simply informs the House of his doing so, the latter communication being satisfactory evidence of the resignation. 1 Hinds § 567; 103–1, Jan. 21, 1993, p ____.

Where a vacancy arises in the House by death, resignation, declination, or action of the House, the vacancy must be officially declared in order that a special election may be held. Usually, the state executive declares the vacancy to exist, particularly in cases of death, declination, or resignation. Deschler Ch 8 § 9. If a Governor does not recognize the existence of a vacancy, such as in the case of a presumed death not susceptible of proof, the House itself may initiate the action to have the seat declared vacant. 93–1, Jan. 3, 1973, pp 15, 16. Such a declaration is proper where independent House action has created a vacancy by expulsion or exclusion of a Member. Deschler Ch 8 § 9. In such cases, the House, by privileged resolution, directs the Speaker to notify the state executive. *Manual* § 22. The state executive is also notified where the Member resigns directly to the Speaker, rather than to the Governor of his home state as is customary.

A resolution declaring a seat vacant is used where a Member-elect is unable to take the oath or to resign due to an incapacitating illness. 97–1, Feb. 24, 1981, pp 2916–2918. In this 1981 instance, a letter to the Speaker from the attending physician was inserted in the Record to document the physical condition of the Member-elect. The letter stated that she was in a coma and would be unable to take the oath.

Electoral Counts—Selection of President and Vice President

Research References
3 Hinds §§ 1911–1980
6 Cannon §§ 438–441
3 Deschler Ch 10
U.S. Const. amend. XII

§ 1. In General; Election of President by House

Both the House and Senate formally participate in the process by which the President and Vice President are elected. Congress is directed by the Constitution to receive and, in joint session, count the electoral votes certified by the states. If no candidate receives a majority of the electoral vote, the House is directed to elect the President, while the Senate is directed to elect the Vice President. U.S. Const. amend. XII. *Manual* § 219.

The House has on two occasions, in 1801 and 1825, proceeded to elect a President where no candidate had a majority of electoral votes. 3 Hinds §§ 1983, 1985. Both Thomas Jefferson and John Quincy Adams were chosen after prolonged debate and repeated ballots in the House. Under both the original constitutional provision and the 12th Amendment, balloting was by states, with each state having one vote.

There have been rare instances in which the result of the electoral vote has differed from the result of the popular vote. See, for example, 3 Hinds §§ 1953–1956. Generally, however, the electoral vote has followed the popular vote because of the manner in which electors are chosen under state law. Deschler Ch 10 § 1.

Under the electoral college system, the electors prepare certified lists of all persons voted for as President and Vice President. The certificates are transmitted to the seat of government and directed to the President of the Senate. U.S. Const. amend. XII. Certificates identifying the electors are prepared and transmitted pursuant to statute (3 USC § 6).

Under earlier procedure bills relating to the electoral vote count were considered of high constitutional and parliamentary privilege. 3 Hinds

§ 2578. Resolutions relating to the method of examining the electoral votes (3 Hinds § 2573) or to procedural irregularities (3 Hinds § 2576) or fraud (3 Hinds § 2577) in connection therewith, were also considered as privileged. Following enactment in 1948 of a law (3 USC §§ 15–18) governing the counting of electoral votes in Congress, these precedents became largely obsolete since a mechanism exists to address those procedures.

§ 2. Joint Sessions

The House and Senate meet in joint session to count the electoral vote. 87–1, Jan. 6, 1961, p 277; 93–1, Jan. 3, 1973, p 30; 97–1, Jan. 5, 1981, pp 192, 193. The joint session is provided for by concurrent resolution which merely ratifies the requirement in law for a joint session on January 6 at one o'clock p.m. to count the electoral vote. Deschler Ch 10 § 2.1 (form); 91–1, Jan. 3, 1969, p 36. This resolution is considered as privileged. 3 Hinds §§ 2573–2577; 97–1, Jan. 5, 1981, p 114. The resolution sets forth the provisions of the United States Code (3 USC § 15) which specify the procedures to be followed. These provisions are in effect a joint rule of the two Houses for the occasion and apply in the joint session and in the event they divide to consider an objection. 91–1, Jan. 6, 1969, pp 145–147, 169–172.

The Speaker may be authorized to declare a recess in connection with the joint session (Deschler Ch 10 § 2.2) and he may decline to recognize for one-minute speeches or extensions of remarks before recessing for that purpose (Deschler Ch 10 § 2.3; 91–1, Jan. 6, 1969, p 145).

§ 3. Consideration and Voting

Generally

A joint session to count the electoral votes is presided over by the President of the Senate (3 USC § 15). In his absence, the President pro tempore of the Senate presides and calls the session to order. Deschler Ch 10 § 2.5. The electoral votes are counted by tellers (Deschler Ch 10 §§ 3.1–3.4) who have been appointed on the part of the House by the Speaker (87–1, Jan. 3, 1961, p 26; 89–1, Jan. 4, 1965, p 26; 95–1, Jan. 6, 1977, p 312) and on the part of the Senate by the Vice President (87–1, Jan. 4, 1961, p 72). The certificates of votes given by the electors are opened by the President of the Senate and handed to the tellers, who read them in the presence and hearing of the two Houses. Deschler Ch 10 § 1.

The certificates and other papers relating to the electoral count are presented and acted on in alphabetical order by states (3 USC § 15). Where certificates have been received from both the Democratic and Republican

slates of electors from a state, and each slate purports to be the duly appointed electors from that state, the Vice President presents the certificates, with all attached papers, in the order in which they have been received. 87–1, Jan. 6, 1961, p 288.

Where there are conflicting electoral certificates from the same state, the two Houses meeting in joint session may by unanimous consent determine which certificate is to be accepted as valid; and the tellers may then be directed to count the votes in the certificate deemed valid. 87–1, Jan. 6, 1961, pp 288–291.

Objections

In the event that a timely objection in proper form is raised in connection with the count, the joint session divides, the objection to be considered by each House meeting in separate session. Deschler Ch 10 § 3.6. After the two Houses have divided, a motion to lay the objection on the table is not in order. Deschler Ch 10 § 3.7; 91–1, Jan. 6, 1969, pp 145–147, 169–172. The controlling statute provides for the procedure to be followed in debate after the two Houses have separated. 3 USC § 17. In one instance, the Senate agreed by unanimous consent to modify the terms of the statute with respect to the division of time for debate. Deschler Ch 10 § 3.8.

If both the House and Senate or either of them, reject the objection, the Presiding Officer of the joint session directs the tellers to record the votes as submitted. 91–1, Jan. 6, 1969, pp 145–147, 169–172.

§ 4. Presidential Disability; Filling Vice Presidential Vacancies

In addition to its responsibilities in ascertaining and counting the electoral votes cast for President and Vice President, Congress has the duty, under the Constitution, of determining disputes as to Presidential disability. U.S. Const. amend. XXV §§ 3, 4. Messages relating to Presidential incapacity are laid before the House. In 1985, the Speaker laid before the House two communications from the President of the United States advising (1) of the President's temporary period of incapacity of discharging the Constitutional powers and duties of the Office of President and directing that the Vice President discharge those duties in his stead and (2) a subsequent Presidential determination of his ability to resume those powers and duties. 99–1, July 15, 1985, p 18955.

The House and Senate also act on the nomination of a Vice President to fill a vacancy. The Constitution provides that in such cases the President shall nominate a Vice President who shall take office upon confirmation by a majority vote of both Houses. U.S. Const. amend. XXV § 2. Messages from the President transmitting his nomination of a Vice President under

this provision are laid before the House by the Speaker. The nomination is referred to the Committee on the Judiciary, which has jurisdiction over matters relating to Presidential succession. 93–1, Oct. 13, 1973, p 34032 (nomination of Gerald R. Ford as Vice President); 93–2, Aug. 20, 1974, p 29366 (nomination of Nelson A. Rockefeller as Vice President). The House and Senate consider the nomination by acting separately on simple resolutions. Deschler Ch 10 § 4.3.

Germaneness of Amendments

A. GENERALLY

B. APPLICATION OF RULE TO PARTICULAR FORMS OF AMENDMENT

C. AMENDMENTS IMPOSING QUALIFICATIONS OR LIMITATIONS

D. RELATION TO EXISTING LAW

Research References
5 Hinds §§ 5801–5924
8 Cannon §§ 2908–3064
10, 11 Deschler-Brown Ch 28
Manual §§ 467, 794–800

A. Generally

§ 1. Introduction

Evolution of Rule

It is a fundamental rule of the House that a germane relationship must exist between an amendment and the matter sought to be amended. No such rule existed under the practice of the early common law nor under rules of Parliament. A legislative assembly could by an amendment change the entire character of any bill or other pending proposition. It might entirely displace the original subject under consideration, and in its stead adopt one wholly foreign to it, both in form and in substance. 5 Hinds § 5825.

The House adopted its first germaneness rule in 1789, amended it in 1822, and has adopted the rule in every Congress since that date. Today the rule states that no motion or proposition on a ''subject different from

that under consideration shall be admitted under color of amendment.'' Rule XVI clause 7. *Manual* § 794. Most state legislatures also have germaneness requirements. The purpose of the rule is to maintain an orderly legislative process, and to prevent hasty and ill-considered legislation. It prevents the presentation to the House of propositions that might not reasonably be anticipated, and for which it might not be properly prepared. 8 Cannon § 2993.

It should be noted at the outset that the germaneness rule, however important it may be to the legislative process, is not self-enforcing. It is deemed waived if no Member raises a point of order against it; and the rule is frequently waived through the adoption by the House of a special rule from the Committee on Rules. § 37, infra.

Application of Rule as Limited to Amendments

The germaneness rule applies to amendments to a bill and not to the relationship between the various propositions set forth within the bill itself. 5 Hinds § 6929. Deschler-Brown Ch 28 § 1. While a committee may report a bill embracing different subjects, it is not in order during consideration of a bill to introduce a new subject by way of amendment. 5 Hinds § 5825. A point of order will not lie that an appropriation in a general appropriation bill is not germane to the rest of the bill. 88–1, Dec. 16, 1963, p 24753.

Application Prior to Adoption of Rules

The germaneness requirement has been held applicable in the House even prior to the adoption of the rules under a theory of general parliamentary law based upon precedent. An amendment offered prior to the adoption of the rules may be subject to a point of order if it is not germane to the proposition to which offered. 91–1, Jan. 3, 1969, p 23.

§ 2. Germaneness Defined; Factors To Be Considered

In General

When it is objected that a proposed amendment is not in order because it is not germane, the meaning of the objection is simply that the amendment is on a ''subject different'' from that under consideration. This is the test of admissibility prescribed by the express language of Rule XVI clause 7.

For an amendment to be germane it must be one that would appropriately be considered in connection with the bill. 8 Cannon § 2993. The concept implies more than the mere ''relevance'' of one subject to another. It is frequently stated that the fact that two subjects are related does not necessarily render them germane to each other. 8 Cannon §§ 2970, 2971, 2995; 82–1, May 24, 1951, p 5832. The germaneness of an amendment may

depend, for example, on the relative scope of the amendment as compared with that of the proposition sought to be amended. A proposition of narrow or limited scope may not be amended by a proposition of a more general nature, though both propositions are related to each other. § 10, infra. To a bill authorizing emergency loans to livestock producers, an amendment changing the word ''livestock'' to ''agricultural'' was held to broaden the class of producers covered by the bill and, therefore, not germane. Deschler-Brown Ch 28 § 9.27.

Factors Considered in Determining Germaneness

In evaluating an amendment to determine its germaneness, the Chair considers the relationship of the amendment to the pending text, as perfected (90–2, July 23, 1968, p 22789), and not the relationship between the amendment and an existing statute which the pending bill seeks to amend (90–1, Oct. 11, 1967, p 28649) unless the existing statute is so comprehensively amended by the pending bill as to call into question all its provisions (8 Cannon § 2942). The Chair considers the relationship of the amendment to the text to which it is offered and does not rely on language in accompanying reports not contained in the pending text. 95–2, Oct. 6, 1978, p 34111.

The stage of the reading in the House or Committee of the Whole must also be considered when passing on the germaneness of a particular amendment. An amendment that might be considered germane if offered at the end of the reading of the bill for amendment may not be germane if offered during the reading, before all the provisions of the bill are open to consideration. 91–1, Oct. 3, 1969, p 28442. See also § 3, infra.

The germaneness of an amendment is not to be judged by the apparent motives of the Member offering it. 98–2, May 30, 1984, pp 14493–96. In ruling on germaneness, the Chair does not construe the legal effect of the bill, law, or amendment in question, but only rules on whether the amendment addresses a ''subject different'' from that under cnsideration. 98–2, June 26, 1984, pp 18842, 18846, 18847.

The title or heading of a bill may be considered but is not controlling in determining the question of germaneness of amendments offered to propositions in the bill. 92–1, Nov. 4, 1971, pp 39323–29. The scope of a measure is determined by its provisions and not by the phraseology of its formal title. 94–1, Sept. 18, 1975, p 29334. Thus, the heading of a portion of a bill as ''Miscellaneous'' will not alone permit amendments to that portion that are not germane to its actual content; but the provisions under such a heading may be sufficiently diverse to permit an amendment to be tested by its germaneness to the bill as a whole. 96–1, Apr. 10, 1979, pp 8032, 8034–37.

§ 3. Proposition to Which Amendment Must Be Germane

Generally

The germaneness of an amendment is tested by its relationship to the particular portion of the bill to which offered. 90–1, Oct. 11, 1967, p 28649; 92–1, Oct. 14, 1971, pp 36194, 36211. Deschler-Brown Ch 28 § 2. The amendment should be germane to the particular paragraph or section to which it is offered (5 Hinds §§ 5811–5820; 8 Cannon § 2922; 92–1, Oct. 14, 1971, pp 36194, 36211; 99–2, Sept. 19, 1986, p 24730; *Manual* § 795) and not anticipate the subject matter of other titles not yet read. 101–2, July 31, 1990, p ____. Likewise, the test of germaneness of an amendment offered to a bill being read for amendment by titles is its relationship to the pending title as perfected (96–1, Apr. 9, 1979, pp 7750, 7752, 7755–57) and not to the particular section addressed by an amendment (102–1, June 25, 1991, p ____). But where an amendment in the form of a new title is offered after the reading of several diverse titles on a general subject, it is sufficient that the amendment be germane to those titles or to the bill as a whole. 92–1, Nov. 4, 1971, p 39267; 99–2, Sept. 19, 1986, pp 24731–69. Similarly, an amendment in the form of a new section need not necessarily be germane to the preceding section of the bill, it being sufficient that the amendment relate to the provisions of the bill read to that point. By the same reasoning, an amendment in the form of a new paragraph need not necessarily be germane to the paragraph immediately preceding or following it. 8 Cannon §§ 2932–2935. See also 93–2, July 2, 1974, p 22029; *Manual* § 795.

Amendments to Pending Amendments

The test of germaneness of an amendment to a pending amendment is its relationship to the pending amendment and not to the bill to which that pending amendment has been offered. 94–1, July 22, 1975, p 23990; 94–1, Oct. 2, 1975, p 31487. It follows that the test of germaneness of a substitute for a pending amendment is the relationship between the substitute and the amendment, and not between the substitute and the pending bill. 92–1, Nov. 4, 1971, p 39302. Similarly, the test of germaneness of an amendment to an amendment in the nature of a substitute is the relationship between those two propositions, and not between the amendment and the pending bill. 93–1, July 19, 1973, pp 24962, 24963; 96–2, Nov. 13, 1980, pp 29523–28.

Consideration of Entire Bill

An amendment may be germane to more than one portion of a bill. 93–2, Mar. 27, 1974, pp 8508, 8509; 96–2, May 21, 1980, pp 11972, 11973. Indeed, it may be necessary to evaluate the entire text when passing on the germaneness of a particular amendment. On the other hand, an amendment might be considered germane at the end of the reading of the bill for amendment even though it would not have been germane if offered during the reading, before all the provisions of the bill were open to consideration. 91–1, Oct. 3, 1969, p 28442. Where a bill is, by unanimous consent, considered as read and open to amendment at any point, the test of germaneness of an amendment thereto is its relationship to the entire bill and not just the particular section to which offered. 94–1, Sept. 29, 1975, pp 30761–68; 99–2, Jan. 30, 1986, pp 1045, 1049, 1050–52; *Manual* § 795.

Effect of Prior Amendments

In passing on the germaneness of an amendment, the Chair considers the relationship of the amendment to the bill as modified by prior amendment (90–1, June 8, 1967, p 15159; 93–2, Oct. 8, 1974, pp 34415, 34416; 94–1, Apr. 23, 1975, p 11550), and is not bound solely by the provisions of the original text. Thus, a perfecting amendment may be ruled out as not germane where it pertains to text that has been stricken from the bill. 87–2, July 12, 1962, p 13431.

Effect of Pendency of Motion to Strike

Perfecting amendments to a title in a bill may be offered while there is pending a motion to strike out the title, and are required to be germane to the text to which offered, not to the motion to strike out. 91–1, Oct. 3, 1969, p 28454.

§ 4. Tests of Germaneness

Generally; Exclusiveness of Tests

Various tests may be invoked to determine the germaneness of an amendment. These tests are not mutually exclusive. *Manual* § 798d. It is essential to note that the Chair, in determining a question of germaneness, must first understand the nature and scope of the pending portion of the proposition being amended, and then the relationship of the offered amendment to that pending text. The Chair follows the most appropriate line of precedent in rendering a ruling. One can avoid the misperception that an equally compelling and valid germaneness test can be applied and precedent

cited to support either side of a germaneness point of order by examining in full the pending bill and amending text.

An amendment may satisfy one of the tests and yet be ruled out because of its failure to satisfy another. An amendment may thus be subject to a germaneness point of order even though it is in fact related to the pending proposition. This principle is illustrated in the precedents set out below:

Held Not Germane

Text	Amendment
To exclude a Member-elect...	To expel the Member-elect (5 Hinds § 5924)
Proposing the expulsion of a Member...	Proposing censure (6 Cannon § 236)
Relating to interstate commerce...	Relating to foreign commerce (8 Cannon § 2918)
Proposing a committee investigation...	Requesting a committee report (5 Hinds § 5887)
Assigning clerks to committees...	Assigning clerks to Members (5 Hinds § 5901)
Providing for the erection of a building for a mint...	Changing coinage laws (5 Hinds § 5884)
Raising price of agricultural products by creation of corporation...	Raising price through cooperative marketing (8 Cannon § 2912)
Increasing food supplies by educational and demonstrational methods...	Increasing food supplies through sale of fertilizer (8 Cannon § 2980)

§ 5. — Subject Under Consideration as Test

The House germaneness rule precludes amendments ''on a subject different from that under consideration.'' Rule XVI clause 7. *Manual* § 794. This test of germaneness implies more than mere ''relevance.'' (§ 2, supra.) The test is whether or not a new subject is introduced by the amendment. 82–1, May 24, 1951, p 5832. An amendment relating to a subject to which there is no reference in the pending text may be subject to a point of order that it is not germane to the bill. 77–1, Feb. 10, 1941, p 875. Amendments that have been ruled on under this test are shown in the table below.

Held Germane

Text	Amendment
Providing for a canal by one route...	Changing route (5 Hinds § 5909)
Creating a board of inquiry...	Specifying time of report (5 Hinds § 5915)
Creating two boards with separate duties...	Creating one board with authorization to discharge the duties of both boards (8 Cannon § 3064)
Rescinding an order for adjournment...	Fixing new date for adjournment (5 Hinds § 5920)
To regulate immigration...	Providing educational test for immigrants (5 Hinds § 5873)
Controlling public places in District of Columbia...	Removing fence of Botanic Garden (5 Hinds § 5914)
Appropriation for acquiring information pertaining to agricultural products...	Appropriation for investigation incident thereto (8 Cannon § 3060)
To authorize the construction of naval vessels...	Providing that the vessels be constructed in government plants (8 Cannon § 3063)
Relating to the interrelation of House committees and imposing requirements for filing and content of committee reports...	Dealing with the content of reports from the Committee on Appropriations and with the jurisdictional responsibilities of that committee and legislative committees (93–2, Oct. 8, 1974, pp 34416, 34417)
A provision for ameloriation of procedures relating to mortgage foreclosure under the National Housing Act...	A provision for a moratorium on foreclosures of mortgages in economically depressed areas (86–1, May 20, 1959, pp 8636–42)
Relating to certain sections of the Clean Air Act with respect to the impact of shortages of energy resources on standards imposed under that Act...	Relating to another section of that Act suspending for a temporary period the authority of the EPA Administrator to control automobile emissions (93–1, Dec. 14, 1973, pp 41688, 41689)

Held Germane—Continued

Text	Amendment
Prescribing the functions of a new Federal Energy Administration and conferring wide discretionary powers on the Administrator...	Directing the Administrator to issue preliminary summer guidelines for citizen fuel use (93–2, Mar. 6, 1974, pp 5436, 5437)
Requiring a general study of factors affecting domestic production of automobiles...	Requiring the study of a particular factor—currency exchange rates—affecting that production (98–1, Nov. 3, 1983, pp 30782, 30783)

Held Not Germane

Text	Amendment
Proposing admission of religious refugees...	Proposing admission of political refugees (8 Cannon § 3047)
Limiting immigration of aliens...	Disseminating information to attract better class of immigrants (8 Cannon § 3048)
Prohibiting mailing of revolvers...	Prohibiting mailing of publications advertising revolvers (8 Cannon § 3052)
Authorizing arbitration of claims against government...	Appropriating funds to pay claims so arbitrated (8 Cannon § 3057)
Eliminating wage discrimination based on the sex of the employee...	Applying the provisions of the bill to discrimination based on race (87–2, July 25, 1962, p 14778)
Authorizing the use of American civilians to operate an early-warning system in the Sinai...	Requiring that the U.S. contribution to the UN peace-keeping forces in the Middle East be proportionately reduced (94–1, Oct. 8, 1975, pp 32430, 32431)
Establishing a cotton research program and promoting the marketing of cotton...	Providing for research with respect to training and utilization of displaced farm labor in the cotton industry (89–2, Mar. 3, 1966, p 4838)

Held Not Germane—Continued

Text	Amendment
Extending the phased subsidization of certain categories of nonprofit mail...	Establishing a new class of mail and postal rate therefor (93–2, June 19, 1974, p 19817)
Reducing tax liabilities of individuals and businesses by providing diverse tax credits within the Internal Revenue Code...	Providing rebates to recipients under retirement and survivor benefit programs (94–1, Mar. 26, 1975, p 8931)
Governing the political activities of federal employees and containing certain restrictions on federal employment relative to such activities...	Prohibiting any employment or compensation from whatever source for candidates for office (95–1, June 7, 1977, pp 17711, 17712)
Relating to the issue of access to committee hearings and meetings...	Relating to committee staffing (93–1, Mar. 7, 1973, p 6714)
Addressing the administrative structure of a new department...	Prohibiting the department from withholding funds to carry out certain objectives (96–1, June 12, 1979, pp 14485, 14486)

Proposals Relating to Investigations

To a proposal authorizing a program to be undertaken, an amendment providing for a study to determine the feasibility of undertaking such a program may be germane. 99–1, June 26, 1985, p 17460. (This ruling in effect overturned 8 Cannon § 2989.) On the other hand, an amendment requiring certain action is not germane to a proposal that would merely require an investigation. Accordingly, to a proposition establishing a commission to study a matter, an amendment directing an official to undertake and accomplish that matter is not germane. 93–2, Oct. 8, 1974, p 34458. But if an amendment to a proposal to study a matter merely requires the submission of proposed legislation to implement the study, it may be germane. 93–1, Dec. 14, 1973, pp 41747, 41748.

§ 6. — Committee Jurisdiction as Test

Generally

Committee jurisdiction over the subject of an amendment is a relevant test to be applied in determining the germaneness of that amendment. 94–2, June 1, 1976, p 16025; *Manual* § 798c; Deschler-Brown Ch 28 § 4. Thus,

to a bill providing agricultural price supports to stimulate domestic orange production, an amendment restricting imports of oranges (within the jurisdiction of the Committee on Ways and Means) would not be germane. Similarly, an amendment changing the statement of policy contained in a bill is not in order if its effect is to fundamentally change the purpose of the bill and to emphasize a subject within the jurisdiction of another committee. 92–2, May 22, 1972, p 18207. Likewise, an amendment conferring authority on an executive official not mentioned in the pending proposition is not germane where the subject of that authority is not within the jurisdiction represented in the pending proposition. 93–1, Dec. 14, 1973, pp 41736 *et seq.*

The Chairman of the Committee of the Whole may determine the germaneness of an amendment based upon the discernible committee jurisdictions as to subject matter without infringing upon the Speaker's prerogatives under Rule X to determine committee jurisdiction over introduced legislation. 97–1, Oct. 14, 1981, pp 23898, 23899. The fact that the amendment is contained in a motion to recommit the bill with instructions does not dispense with the requirement that the subject matter of the amendment be within the jurisdiction repesented in the pending text. 90–1, Mar. 2, 1967, p 5155.

However, the fact that the subject matter of an amendment lies within the jurisdiction of a committee other than that having jurisdiction over the bill does not necessarily dictate the conclusion that the amendment is not germane; for committee jurisdiction is but one of the tests of germaneness, and in ruling on the question, the Chair must take into consideration other factors, including the fact that the introduced bill may have been broadened or narrowed by amendment. See 92–2, Aug. 17, 1972, p 28913; 93–2, Mar. 5, 1974, pp 5306–09. Where the bill is amended in Committee of the Whole to include matters within the jurisdiction of a committee other than the reporting committee, further similar amendments may be germane. 99–1, July 11, 1985, p 18602. The Chair may also take into account the fact that the portion of the bill being amended itself contains language related to the amendment that is not within the jurisdiction of the committee reporting the bill. 94–2, Apr. 2, 1976, pp 9253, 9254. And an amendment in the nature of a substitute may be in order even though an incidental portion of the amendment, if considered separately, might be within the jurisdiction of another committee. 93–1, Aug. 2, 1973, pp 27673–75.

Committee jurisdiction over the subject of an amendment is a relevant test of germaneness where the pending text is entirely within one committee's jurisdiction and where the amendment falls within another committee's purview. 94–2, Jan. 29, 1976, p 1582. Thus, committee jurisdiction is a relevant test where an authorization bill that is solely within one committee's

jurisdiction is proposed to be amended by permanent changes of laws within another committee's jurisdiction. 95–2, May 24, 1978, p 15294. But committee jurisdiction over the subject of an amendment may not be the most apt test of germaneness where the proposition being amended contains provisions so comprehensive as to overlap several committees' jurisdictions. 99–1, Oct. 8, 1985, pp 26548–51. See also 94–2, Jan. 29, 1976, p 1582; 94–2, June 1, 1976, pp 16024, 16025; 94–2, July 21, 1976, p 23168.

Illustrative applications of the test follow.

Held Not Germane

Text	Amendment
A bill reported from the Committee on International Relations dealing with humanitarian and evacuation assistance in South Vietnam...	Providing for payment of costs of settlement of evacuees in the U.S., a matter within the jurisdiction of the Judiciary Committee (94–1, Apr. 23, 1975, p 11534)
A bill reported from the Committee on Armed Services containing diverse provisions relating to national defense policy, military procurement and personnel...	Requiring reports on the Soviet Union's compliance with its arms control commitments, a matter within the jurisdiction of the Committee on Foreign Affairs (99–1, June 27, 1985, p 17810)
A bill reported from the Committee on Merchant Marine and Fisheries authorizing various activities of the Coast Guard...	Urging cooperation of other nations as to certain Coast Guard and military operations, a matter within the jurisdiction of the Foreign Affairs Committee (100–1, July 8, 1987, p 19013)
A bill reported from the Committee on Public Works and Transportation amending the Federal Water Pollution Control Act...	Amending the Clean Air Act (a statute within the jurisdiction of the Committee on Energy and Commerce) to regulate ''acid rain'' (99–1, July 23, 1985, p 20052)
Authorizing environmental research and development activities of an agency for two years...	Adding permanent regulatory authority by amending a law not within the jurisdiction of the committee reporting the bill (100–1, June 4, 1987, pp 14739 *et seq.*)

Held Not Germane—Continued

Text	Amendment
A bill relating to intelligence activities of the executive branch...	Effecting a change in the rules of the House by directing a committee to impose an oath of secrecy on its members and staff (102–1, May 1, 1991, p ____)
A bill reported from the Committee on Science and Technology authorizing environmental *research and development activities* of an agency for two years...	Expressing the sense of Congress as to the agency's *regulatory and enforcement activity*—a matter within the jurisdiction of another committee (98–2, Feb. 9, 1984, pp 2421 *et seq.*)
A bill reported from the Committee on Interior and Insular Affairs designating certain wilderness areas in Oregon...	Providing unemployment and retraining entitlement payments to persons affected by such wilderness designations (98–1, Mar. 21, 1983, pp 6339 *et seq.*)
A bill reported from the Committee on Agriculture providing a one-year price support for milk...	Relating to tariff duties on imported dairy products, a matter within the jurisdiction of Ways and Means (94–1, Mar. 20, 1975, p 7667)
A bill reported from the Committee on Public Works and Transportation relating to grants to state and local governments for local public works construction projects...	Providing grants to such governments to assist them in providing public services, a program within the jurisdiction of the Committee on Government Operations (94–2, Jan. 29, 1976, p 1582)
A bill reported from the Committee on Ways and Means providing taxes and tax incentives to conserve energy...	Precluding the purchase of fuel-inefficient automobiles by the government, a subject within the jurisdiction of another committee (Government Operations) (94–1, June 13, 1975, pp 18816, 18817)

Held Not Germane—Continued

Text	Amendment
A proposition reported from the Committee on Interstate and Foreign Commerce to conserve energy resources by regulating the production, allocation and use of those resources...	Reducing energy consumption by the federal government by a reduced work-week for federal civilian employees, a matter within the jurisdiction of the Committee on Post Office and Civil Service (93–1, Dec. 14, 1973, p 41756)
A proposition recommended by the Committee on Ways and Means dealing only with import duties and quotas on sugar...	Eliminating all price support payments for sugar, a matter within the jurisdiction of the Committee on Agriculture (95–2, Oct. 6, 1978, p 34111)
A bill reported from the Committee on International Relations providing foreign economic assistance...	Providing foreign *and domestic* economic assistance, a matter within the jurisdiction of the Banking Committee (95–2, May 12, 1978, p 13499)
A bill reported from the Committee on Energy and Commerce relating to mentally ill individuals...	Prohibiting certain uses of general revenue-sharing funds (a matter within the jurisdiction of another committee) in certain jurisdictions (99–2, Jan. 30, 1986, pp 1052, 1053)

§ 7. — Fundamental Purpose as Test

Another test used by the Chair in determining germaneness points of order is one in which the fundamental purpose of the bill is compared with the fundamental purpose of the amendment. *Manual* § 798b. If the purpose or objective of an amendment is unrelated to that of the bill to which it is offered, the amendment may be held not germane. 8 Cannon § 2911; 86–2, Mar. 15, 1960, p 5655. This test is particularly applicable to an amendment in the nature of a substitute. Deschler-Brown Ch 28 § 5. If the purpose of a highway bill is to connect points A and B, an amendment specifying a different *route* between A and B would reflect the same fundamental purpose. But an amendment connecting A and D would have a different purpose and would not be germane. Compare 5 Hinds § 5909.

An amendment changing the statement of policy contained in a bill is not in order if its effect is to fundamentally change the purpose of the bill. 92–2, May 22, 1972, p 18207. An amendment changing the law relating to

one agency is not germane to a bill relating to a different agency. 100–1, July 8, 1987, pp 19013–16.

In determining the fundamental purpose of a bill or an amendment offered thereto, the Chair may examine the broad scope of the bill and the stated purpose of the amendment and need not be bound by ancillary purposes that are merely suggested by the amendment. 95–2, Sept. 27, 1978, p 32051. An amendment in the form of a new title may be germane to a bill as a whole where that bill contains additional provisions not necessarily confined to the primary purpose, so long as the amendment falls within the overall parameters of the bill. 97–2, May 6, 1982, p 8933.

The precedents below illustrate the germaneness principal that the fundamental purpose of the amendment must relate to that of the pending measure.

Held Germane

Text	Amendment
Authorizing funds to provide humanitarian and evacuation assistance and authorizing the use of United States troops to provide that assistance...	Authorizing funds for military aid to a foreign country to be used by that country to further the fundamental purpose of the bill (94–1, Apr. 23, 1975, p 11509)
Enforcing the right to vote as guaranteed by the 15th Amendment to the Constitution...	Protecting freedom of speech and other First Amendment rights whose abridgment might affect the exercise of voting rights (89–1, July 9, 1965, p 16263)
Enforcing constitutional voting rights by requiring preservation of federal election returns...	Providing for court appointment of voting referees to insure protection of voters' rights (86–2, Mar. 15, 1960, p 5655)
Making it a federal crime to use a firearm during the commission of a felony that may be prosecuted in a federal court...	Making it a crime to carry a firearm during the commission of a felony and providing for a trial in either a state or federal court (90–2, July 23, 1968, p 22789)

Held Germane—Continued

Text	Amendment
Providing an omnibus surface transportation authorization for highway-related projects as well as roadways...	Authorizing funds for certain highway projects that would incidentally permit completion of a related flood control project (95–2, Sept. 27, 1978, p 32051)
Authorizing the construction of a trans-Alaska oil-gas pipeline pursuant to procedural safeguards promulgated by the Secretary of the Interior...	Containing similar procedures and including the condition that all participants be assured rights against discrimination as set forth in the Civil Rights Act (93–1, Aug. 2, 1973, pp 27673–75)

Held Not Germane

Text	Amendment
Proposing a constitutional amendment relating to the election of the President and Vice President by popular vote rather than through the electoral college process...	Pertaining to the apportionment of Representatives and the size of congressional districts (91–1, Sept. 18, 1969, p 25983)
Authorization of military assistance programs to foreign nations...	Authorizing a contribution to the UN International Atomic Energy Agency (94–2, Mar. 3, 1976, p 5226)
Authorizing LEA grants for the purchase of photographic and fingerprint equipment for law enforcement purposes...	Providing for the purchase of bullet-proof vests (96–1, Oct. 12, 1979, pp 28123, 28124)
Extending the advisory and informational authority of the Council on Wage and Price Stability to encourage *voluntary programs* to resist inflation...	Authorizing the President to issue *orders and regulations* stabilizing economic transfers, including wages and prices (96–1, Mar. 20, 1979, pp 5549, 5550, 5562–64)
Establishing a new office within a government department...	Abolishing the department (88–2, Mar. 12, 1964, p 5125)

Held Not Germane—Continued

Text	Amendment
Enabling agencies of the government to formulate policies relating to energy conservation...	Prohibiting certain uses of fuel (for school busing) and imposing criminal penalties for such use (94–1, Sept. 17, 1975, p 28927)
Extending various laws relating to higher education...	Imposing restrictions on preschool, elementary, and secondary education policy (94–2, Mar. 12, 1976, p 13530)
Providing funding for urban highway transportation systems...	Broadening the bill to include rail transportation (92–2, Oct. 5, 1972, pp 34111, 34115)
Requiring registration and public disclosure by lobbyists but not regulating or prohibiting their activities...	Regulating their activities by placing a ceiling on their monetary contributions to federal officials; prohibiting lobbying within certain areas (94–2, Sept. 28, 1976, p 33085)
Relating to the minting and issuance of public currency...	Providing for a commemorative coin intended for private circulation (91–1, Oct. 15, 1969, p 30101)

§ 8. — Accomplishing Result of Bill by Different Method

In order to be germane, an amendment must not only have the same end as the matter sought to be amended, but must contemplate a method of achieving that end that is closely allied to the method encompassed in the bill or other matter sought to be amended. *Manual* § 798b; 91–2, Aug. 11, 1970, p 28165; 94–2, Jan. 29, 1976, p 1582; 94–2, June 23, 1976, p 20020. Under this principle, when a proposition to accomplish a certain purpose by one method is pending, an amendment seeking to achieve the same purpose by another closely related method is germane. 92–2, June 12, 1972, pp 20403–06; 96–2, Sept. 29, 1980, pp 27832–52. For example, if the purpose of a bill is to support the health of school children by mandating oranges in a school lunch program, an amendment providing free vitamin C supplements would be germane. Likewise, a proposition to accomplish a certain result by two alternative methods may be amended by language proposing to accomplish that result by a third closely related method. 92–2, June 12, 1972, pp 20403–06. But an amendment to accomplish a similar purpose by an unrelated method, not contemplated by the bill, is not ger-

mane. 90–1, Aug. 8, 1967, p 21849; 91–2, Aug. 11, 1970, p 28165; 94–1, June 12, 1975, pp 18695–702. These principles are illustrated in the precedents below.

Held Germane

Text	Amendment
To accomplish a result through regulation by an executive branch agency...	To achieve the same purpose through the use of another governmental entity (96–2, Sept. 29, 1980, pp 27832–52)
To conduct a broad range of programs involving energy sources, including environmental research related to the development of energy sources...	Authorizing the Council on Environmental Quality to evaluate environmental effects of energy technology (93–1, Dec. 19, 1973, pp 42618, 42619)
Providing loan guarantee programs for all states and subdivisions...	Providing direct loans (and limited to New York) (94–1, Dec. 2, 1975, p 38180)
Subjecting employers who fail to apprise their workers of health risks to penalties under certain laws and regulations...	Subjecting employers to penalties prescribed in the amendment (100–1, Oct. 14, 1987, p 27885)

Held Not Germane

Text	Amendment
Conserving energy through the imposition of civil penalties on manufacturers of low miles-per-gallon automobiles...	Conserving energy through tax rebates to purchasers of high miles-per-gallon automobiles (94–1, June 12, 1975, pp 18695–702)
Establishing an independent agency within the executive branch to accomplish a particular purpose...	Emphasizing committee oversight and authorizing committees to order the agency to take certain actions (94–1, Nov. 5, 1975, p 35043)
Authorizing the Attorney General to participate in litigation based on discrimination in public facilities...	Establishing a Community Relations Service to assist in resolving disputes arising from discriminatory practices (88–2, Feb. 6, 1964, p 2251)

Held Not Germane—Continued

Text	Amendment
Authorizing the promulgation of a national drinking water standards to protect public health from contaminants...	Requiring the negotiation and enforcement of international agreements to accomplish that purpose (93–2, Nov. 19, 1974, pp 36393, 36394)
To aid in the control of crime through research and training...	To control crime through regulation of the sale of firearms (90–1, Aug. 8, 1967, p 21849)
A bill extending unemployment compensation benefits during a period of economic recession...	Stimulating economic growth by tax incentives and regulatory reform (102–1, Sept. 17, 1991, p ____)
A bill to promote technological advancement by fostering federal research and development...	Exhorting to do so by changes in tax and antitrust laws (102–1, July 16, 1991, p ____)
To provide financial assistance to domestic agriculture through a system of price support payments...	Protecting domestic agriculture by restricting imports in competition therewith (97–1, Oct. 14, 1981, pp 23898, 23899)

§ 9. — Individual Proposition or Class Not Germane to Another

One individual proposition is not germane to another individual proposition. 8 Cannon §§ 2951–2953, 2963–2966; *Manual* § 798e; 94–1, Oct. 2, 1975, p 31487; 101–2, Oct. 22, 1990, p ____. This rule is applied even where the two belong to the same class. 8 Cannon § 2951; 96–1, Dec. 12, 1979, pp 35522, 35527, 35528; 99–2, Jan. 29, 1986, p 684; 102–1, Oct. 24, 1991, p ____. Thus, in theory, a bill regulating the transportation of apples could not be amended by language regulating the transportation of oranges. However, if an individual proposition is rendered general in its scope by amendment, it is then subject to further amendment by propositions of the same class. 8 Cannon § 3003.

An individual proposition is not rendered germane to another individual proposition merely because they are related. Thus, to a bill amending one subsection of law dealing with one prohibited type of activity, an amendment to another subsection dealing with a related but separate prohibited type of activity is not germane. 96–1, May 16, 1979, pp 11466, 11467, 11470.

Where a bill covers two or more subjects within a readily definable class, it is not in order to add additional subjects outside of that class by

way of amendment. 92–2, Feb. 2, 1972, pp 2180–82; 98–1, Sept. 29, 1983, pp 26467, 26484, 26485. Likewise, to a bill pertaining to several functions within an identifiable class of activity, an amendment adding a function outside that class would not be germane.

To a bill dealing with relief for one class, an amendment seeking to include another class is not germane. 91–2, July 27, 1970, p 25801. Thus, to a bill providing financial relief for one class—agricultural producers—an amendment is not germane where it extends such relief to another class, commercial fishermen, particularly where relief to the latter class is within the jurisdiction of another committee. 95–2, Apr. 24, 1978, p 11081.

To a bill extending certain provisions to a certain class of employees, an amendment to extend those provisions to an additional category of employees within that same class is germane. 92–2, Apr. 27, 1972, p 14567. But such an amendment is not germane if it brings other classes of employees within the scope of the bill. 99–1, Oct. 9, 1985, p 26954.

The precedents below illustrate applications of the principle that an amendment relating to one individual proposition or class may not be offered to a measure relating to another individual proposition or class.

Held Not Germane

Text	Amendment
Providing for the relief of one individual...	Providing for similar relief to another (5 Hinds §§ 5826–5929)
Providing for the extermination of the boll weevil...	Including the gypsy moth (5 Hinds § 5832)
Providing a clerk for a committee...	Providing a clerk for another committee (5 Hinds § 5833)
Providing for an additional judge in one territory...	Providing additional judges in other territories (5 Hinds § 5830)
Providing relief for dependents of men in the Army...	Extending benefits to dependents in National Guard (8 Cannon § 2953)
Pensioning veterans of Indian wars...	Pensioning veterans of Mexican wars (8 Cannon § 2960)
Appropriating for only one year (and containing no provisions extending beyond that year)...	Extending the appropriation to another year (8 Cannon § 2913; *Manual* § 798e)

Held Not Germane—Continued

Text	Amendment
Containing diverse provisions relating to congressional actions on the budget...	Repealing the Impoundment Control Act, thereby addressing Presidential authority to rescind or defer (96–2, Nov. 18, 1980, pp 30026, 30027)
Siting a certain type of repository for a specified kind of nuclear waste...	Prohibiting the construction at another site of another type of repository for another kind of nuclear waste (102–2, July 21, 1992, p ____)
Providing for the disposal of tin from the national stockpile...	Providing for the disposal of silver from the stockpile (96–1, Dec. 12, 1979, pp 35522, 35527, 35528)
To provide financial assistance to the states for construction of public school facilities...	Proposing loans to assist in the construction of private schools (86–2, May 26, 1960, p 11292)
Relating to settlement of a particular railway labor dispute...	Concerning another dispute between a different railroad company and its employees (90–1, June 15, 1967, p 15930)
Relating to a certain class of prohibited activities...	Proposing to include another class of prohibited activities (92–2, Aug. 17, 1972, p 28883)
Relating to the design of certain coins...	Specifying the metal content of other coins (93–1, Sept. 12, 1973, pp 29377, 29378)
Regulating poll-closing time in Presidential *general* elections...	Extending the provisions to Presidential *primary* elections (99–2, Jan. 29, 1986, p 684)
Relating to the civil service system for federal civilian employees...	Including other classes of employees (postal and District of Columbia employees) (95–2, Sept. 7, 1978, pp 28437–39; 99–1, Oct. 9, 1985, pp 26951–54)
Containing a cost-of-living adjustment for foreign service retirees...	Containing a comparable adjustment in annuities for federal civil service employees (94–2, June 18, 1976, p 19226)

Held Not Germane—Continued

Text	Amendment
To determine the equitability of federal pay practices under statutory systems applicable to agencies of the executive branch...	To extend the determination of fairness to pay practices in the legislative branch (100–2, Sept. 28, 1988, pp 26420–22)
Providing for payment from the Senate contingent fund of certain travel expenses incurred by Senate employees...	Providing additional travel allowances, payable from the House contingent fund, to Members of the House (87–1, Mar. 29, 1961, p 5278)
Authorizing grants to states for purchase of one class of equipment (photographic and fingerprint equipment) for law enforcement purposes...	Including assistance for the purchase of a different class of equipment (bulletproof vests) (96–1, Oct. 12, 1979, pp 28121–24)

§ 10. — General Amendments to Specific or Limited Propositions

A specific proposition may not be amended by a proposition more general in scope. 5 Hinds § 5843; 8 Cannon §§ 2997, 2998; Deschler-Brown Ch 28 § 9; *Manual* § 798f; 97–2, Aug. 10, 1982, p 20263; 97–2, Sept. 23, 1982, pp 24963, 24964; 98–2, Jan. 24, 1984, pp 272, 284, 285. Thus, an amendment applicable to fruits of all kinds would not be germane to a bill dealing only with apples. So too, an amendment applicable to all departments and agencies is not germane to a bill limited in its application to only certain departments and agencies. 90–1, Sept. 27, 1967, p 26957. Even an amendment which merely strikes words from a bill may be ruled out if the amendment has the effect of broadening the scope of the bill. § 17, infra.

A substitute for an amendment must be confined in scope to the subject of the amendment. 93–2, Mar. 6, 1974, pp 5448, 5449. Thus, an amendment rewriting an entire concurrent resolution on the budget is not germane to a perfecting amendment proposing certain changes in figures for one of the years covered by the resolution. 96–1, May 2, 1979, pp 9564–66.

The precedents below illustrate the principle that a specific proposition may not be amended by a proposition general in nature. The question for the Chair frequently consists in determining what comprises a ''general'' or ''specific'' proposition.

Held Not Germane

Text	Amendment
Admitting a Territory...	Admitting several Territories (5 Hinds § 5837)
Relating to all corporations in interstate commerce...	Relating to all corporations (5 Hinds § 5842)
Proposition applicable to one bureau of the Navy Department...	Application to the Navy Department as a whole (8 Cannon § 2997)
Prohibiting speculation in cotton...	Prohibiting speculation in cotton, wheat, and corn (8 Cannon § 3001)
Amending a law in one particular...	Repealing the law (5 Hinds § 5924; 8 Cannon § 2949)
Authorizing loans to farmers in certain areas...	Authorizing loans without geographical restriction (8 Cannon § 3235)
To authorize foreign economic assistance to *certain qualifying nations*...	To require reports on human rights violations by *all foreign countries* (95–2, May 12, 1978, p 13500)
Restricting the use of funds for military operations in South Vietnam...	Extending that restriction to other countries in Indochina (94–1, Apr. 23, 1975, p 11508)
Proposing an amendment to the Constitution prohibiting the U.S. or any state from denying persons 18 years of age or older the right to vote...	Requiring the U.S. and all states to treat persons 18 years and older as having reached the age of legal majority for all purposes under the law (92–1, Mar. 23, 1971, p 7567)
Making it a federal crime to obstruct court orders relating to desegregation of public schools...	Making it applicable to all court orders (86–2, Mar. 23, 1960, p 6369)
Dealing with *official conduct* of federal employees...	Relating to *any criminal conduct* of those officials (95–2, Oct. 12, 1978, p 36461)
Extending the benefits of a federal program to one class (public schools)...	To include a broader category—all nonprofit institutions in depressed areas (89–2, Sept. 1, 1966, p 21656)

Held Not Germane—Continued

Text	Amendment
A bill amending an existing law to promote economic development through financial assistance to local communities...	Requiring a study of the impact of *all* federal, state, and local laws and regulations on employment opportunities (98–1, July 12, 1983, pp 18712, 18713)
Relating to mental health...	Addressing a variety of public health programs (99–2, Jan. 30, 1986, pp 1052, 1053)
Temporarily suspending certain requirements of the Clean Air Act...	Temporarily suspending other requirements of all other environmental protection laws (93–1, Dec. 14, 1973, p 41751)
Authorizing activities of certain government agencies for a temporary period...	Permanently changing existing law to cover a broader range of government activities (100–2, May 5, 1988, pp 9934–39)
To appropriate or to authorize appropriations for only one year...	To extend the appropriation or authorization to another year (96–2, Nov. 13, 1980, pp 29523–28)
Dealing with one aspect of federal spending (U.S. contributions to an international financial institution)...	Relating to the entire federal budget, mandating that total outlays not exceed receipts (98–1, Aug. 3, 1983, p 22679)
Appropriating funds for a program for one fiscal year...	Relating to eligibility for funding in any fiscal year (98–1, Oct. 5, 1983, pp 27313, 27314)
Prohibiting the use of funds appropriated for a fiscal year for a specified purpose...	Prohibiting the use of funds appropriated for that or any prior fiscal year for an unrelated purpose (100–1, June 30, 1987, p 18294)

§ 11. — Specific Amendments to General Propositions

A general proposition may be amended by a specific proposition or one more limited in nature if within the same class. 8 Cannon §§ 3002, 3009, 3012; Deschler-Brown Ch 28 § 10; *Manual* § 798g; 94–1, Dec. 2, 1975, p 31810; 97–2, July 20, 1982, p 17093. Thus, a bill regulating the transpor-

tation of fruits of all kinds could be amended by language applicable specifically to oranges. So too, where a bill seeks to accomplish a general purpose by diverse methods, an amendment which adds a specific method to accomplish that result may be germane. 94–2, Apr. 26, 1976, p 11101. Similarly, to a bill authorizing a broad program of research and development, an amendment directing specific emphasis during the administration of that program is germane. 93–1, Dec. 19, 1973, p 42607.

To a proposition conferring a broad range of authority to accomplish a particular result, an amendment granting specific authority to achieve that result is germane. 93–1, Dec. 12, 1973, p 41160; 93–1, Dec. 14, 1973, p 41732; 93–1, Dec. 14, 1973, p 41753.

An amendment defining a term in a bill may be germane so long as it relates to the bill and not to portions of laws being amended which are not the subject of the bill. Thus, to a bill clarifying the definition of persons or institutions under certain civil rights statutes, an amendment providing that the term ''person'' for the purpose of the bill shall include unborn children was held germane. 98–2, June 26, 1984, pp 18865, 18866.

Set out below are precedents illustrating the principle that a general proposition may be amended by a specific or more limited one.

Held Germane

Text	Amendment
Making a lump-sum appropriation for rivers and harbors...	Designating specific projects on which a lump-sum should be expended (8 Cannon §§ 3004, 3008)
Providing for a decennial census of the entire population of the United States...	Relating to the alien population of the United States (8 Cannon § 3005)
Authorizing a commission to report on the public domain...	Specifying a report on a designated area of the public domain (8 Cannon § 3007)
Establishing an executive agency and conferring broad authority thereon...	Directing that agency to conduct a study of a subject within the scope of that authority (93–1, Dec. 14, 1973, p 41752)
Conferring wide discretionary powers upon an energy administrator...	Directing the administrator to issue preliminary summer guidelines for citizen fuel use (93–2, Mar. 6, 1974, pp 5436, 5437)

Held Germane—Continued

Text	Amendment
Authorizing the Federal Energy Administrator to restrict exports of certain energy resources...	Directing that official to prohibit the exportation of petroleum products for use in military operations in Indochina (93–1, Dec. 14, 1973, p 41753)
Directing the President to require all government agencies to use economy model motor vehicles...	Limiting the number of ''fuel inefficient'' passenger motor vehicles which the government could purchase (93–1, Dec. 14, 1973, pp 41722, 41723)
Seeking to accomplish a general purpose (support of the arts and humanities) by diverse methods...	Authorizing the employment of unemployed artists through the National Endowment for the Arts (94–2, Apr. 26, 1976, pp 10098–101)
Addressing a range of criminal prohibitions...	Addressing another criminal prohibition within that range (102–1, Oct. 17, 1991, p ____)

§ 12. — Adding to Two or More Propositions

A measure containing two or more diverse propositions within the same class may be amended by an amendment adding a third proposition on the same subject. 8 Cannon § 3016; 96–1, Aug. 1, 1979, pp 21939, 21944–47; Deschler-Brown Ch 28 § 11. For example, a bill regulating the transportation of apples and oranges could be amended by language extending the bill to bananas. So too, to a bill bringing two new categories within the coverage of existing law, an amendment to include a third category of the same class may be germane. 90–1, Nov. 27, 1967, p 33769. Likewise, where a bill contains several unrelated titles on a general subject, an amendment adding a further title within that general subject is germane. 92–1, Nov. 4, 1971, pp 39323–29. And where a bill defines several unlawful acts, an amendment proposing to include another unlawful act of the same class is germane. 90–1, Aug. 16, 1967, p 22757; 102–1, Oct. 17, 1991, p ____.

On the other hand, where a bill covers two or more subjects within a readily definable class, it is not in order to add additional subjects outside of that class by way of amendment. Thus, to a bill authorizing the Secretary of the Treasury to strike two types of national medals honoring the bicentennial, an amendment permitting private mints to strike state medals was held not germane. 92–2, Feb. 2, 1972, pp 2180–82.

To a bill containing definitions of several of the terms used therein, an amendment may be germane which modifies one of the definitions and adds another (90–1, Sept. 26, 1967, p 26878), or which further defines other terms used in the bill (94–1, Dec. 9, 1975, p 39427).

Held Germane

Text	Amendment
Admitting several Territories into the Union...	Admitting another Territory (5 Hinds § 5838)
Constructing buildings in two cities...	Constructing similar buildings in several other cities (5 Hinds § 5840)
Providing a number of restrictions on an expenditure...	Adding another restriction (8 Cannon § 3010)
Providing for a number of Army camps...	Providing for an additional camp (8 Cannon § 3012)
Authorizing payment to several employees for injuries...	To pay another employee for such injuries (8 Cannon § 3015)
Collecting statistics on agriculture, manufacture, and mining...	Collecting statistics on insurance (8 Cannon § 3016)
Relating to motor trucks and passenger-carrying automobiles...	Relating to motor trucks, passenger-carrying automobiles, motorcycles, and trailers (7 Cannon § 1415)
Setting forth diverse findings and purposes related to a general subject...	Adding another finding or purpose related to that subject (96–1, June 12, 1979, p 14460)
Prohibiting indirect foreign assistance to several foreign countries...	Including additional countries within that prohibition (95–2, Aug. 3, 1978, p 24244)
Relating in many diverse respects to the political rights of the people of the District of Columbia...	Conferring upon that electorate the additional right of electing a nonvoting Delegate to the Senate (93–1, Oct. 10, 1973, pp 33656, 33657)
Containing funds for several departments and agencies...	Providing funds for subway construction in the District of Columbia (92–1, May 11, 1971, p 14437)

Held Germane—Continued

Text	Amendment
Extending coverage of gun control laws to rifles, shotguns, and ammunition...	Relating to registration of firearms by the purchasers thereof (90–2, July 19, 1968, p 22249)
Making unlawful a number of activities in the field of interstate consumer credit transactions...	Adding another activity, ''loansharking,'' to those prohibited in the bill (90–2, Jan. 31, 1968, p 1605)
Extending the coverage of the Flammable Fabrics Act to include wearing apparel and household furnishings...	To bring children's toys within the mandate of the Act (90–1, Nov. 27, 1967, p 33769)
Seeking to reduce tax liabilities in several diverse ways—including tax credits...	Adding an additional tax credit to those contained in the bill (94–1, Mar. 26, 1975, p 8931)
Containing farm programs for dairy products, wool, feed grains, cotton and wheat...	To add a new title relating to poultry and eggs (89–1, Aug. 19, 1965, p 21053)

§ 13. Appropriation Bills

An amendment offered to a general appropriation bill must be germane to the part of the bill that is under consideration. Deschler-Brown Ch 28 § 15. Amendments that are offered to appropriation bills must satisfy the general tests of germaneness that are set forth earlier in this chapter. §§ 4 *et seq.*, supra.

Where an amendment to a general appropriation bill relates to the appropriation of specific funds, it should be offered to the specific item of appropriation to which it applies.

Germaneness is an express requirement of any amendment sought to be introduced pursuant to the ''Holman Rule,'' which permits legislative matter in general appropriation bills under certain circumstances. *Manual* § 844a. See APPROPRIATIONS.

Set out below are precedents illustrating the application of the germaneness rule during consideration of appropriation bills.

Held Germane

Text	Amendment

Held Germane—Continued

Text	Amendment
Providing certain funds and permitting them to remain available beyond the fiscal year covered by the bill...	Placing certain restrictions on their use, to become effective after the expiration of the fiscal year (92–1, Nov. 17, 1971, p 41838)
Providing funds for foreign assistance programs...	To deny use of funds therein to pay arrearages or dues of members of the United Nations (87–2, Sept. 20, 1962, p 20187)
Providing funds for the Department of Agriculture and including a specific allocation of funds for animal disease and pest control...	Providing that no appropriation in the act be used for chemical pesticides where such action would be prohibited by state or local law (91–1, May 26, 1969, p 13753)
Providing appropriations for the Department of Defense...	Providing that none of the funds appropriated by the act be used to finance certain military operations (92–1, Nov. 17, 1971, p 41838)

Held Not Germane

Text	Amendment
Prohibiting aid to one nation unless a certain condition is met...	Prohibiting aid to another nation pending certain actions, and referring to funds in other acts (90–1, Nov. 17, 1967, p 32968)
Providing for continuing appropriations pending enactment of regular appropriation bills and curtailing certain government expenditures...	Requiring an agency to report to each Member the total federal expenditures in his congressional district and directing the Members to take certain steps to effect a reduction in expenditures (90–1, Oct. 18, 1967, p 29290)
Continuing appropriations for certain departments and agencies for one month...	Placing a restriction on the total administrative budget expenditures for the fiscal year and thus affecting funds not continued by the bill (90–1, Sept. 27, 1967, p 26957)

Held Not Germane—Continued

Text	Amendment
Providing supplemental appropriations for certain specified departments of government...	Affecting appropriations for virtually all departments and agencies of government (89–2, Oct. 18, 1966, p 27424)
Continuing the availability of appropriated funds and also imposing diverse legislative conditions on the availability of appropriations...	Permanently changing existing law as to the eligibility of certain recipients (97–1, Dec. 10, 1981, p 30538)
Pertaining to an appropriation for an agency for one year...	Changing the appropriation figure but also adding language having the effect of permanent law (98–1, June 29, 1983, pp 18129, 18130)
Containing funds for a certain purpose to be expended by one government agency...	Containing funds for another government agency for the same general purpose (97–1, July 24, 1981, p 17226)

B. Application of Rule to Particular Forms of Amendment

§ 14. In General

The rule requiring germaneness of amendments has been applied to many forms of propositions having amendatory effect, including an amendment to a particular part of a bill (§ 15, infra), amendments to amendments (8 Cannon § 2924), and amendments affecting specified provisions of existing law where the bill itself amends such law (§ 27, infra). The rule applies to amendments offered by committee as well as to amendments recommended from the floor. § 19, infra.

The form in which an amendment is offered may affect the determination of whether the amendment is germane. Thus, whether an amendment adds a new title to a bill or adds language to an existing title may affect the determination of whether the amendment is germane. § 16, infra.

§ 15. Amendments to Particular Portion of Bill

An amendment must be germane to the particular portion of the bill to which it is offered. 96–1, May 16, 1979, p 11470. If the amendment is offered to a particular paragraph or section, then it must be germane thereto.

Manual § 793; Deschler-Brown Ch 28 § 18; 101–2, July 31, 1990, p ____. Similarly, an amendment to a bill being read for amendment by titles must be germane to the title to which offered. 96–2, Sept. 5, 1980, pp 24375–97. The Chair may rule out an amendment as not germane to the portion to which it has been offered without passing on the germaneness of the amendment to the bill as a whole. 75–3, Mar. 18, 1938, p 3698.

The test of germaneness of an amendment is its relationship to the pending portion of the bill, as amended to that point. 96–1, May 16, 1979, pp 11466, 11467, 11470. For this reason, an amendment may be ruled out because it is not germane to a particular part of the bill, while a similar amendment may be allowed subsequently when the scope of the bill has been broadened by additional paragraphs passed in the reading. 91–1, Oct. 3, 1969, p 28454. By the same token, an amendment that might be considered germane if offered at the end of the reading of the bill for amendment may not be germane if offered during the reading, before all the provisions of the bill are before the Committee of the Whole for consideration. 91–1, Oct. 3, 1969, p 28442.

In passing on the germaneness of an amendment, the Chair considers the relation of the amendment to the bill as modified by the Committee of the Whole at the time the amendment is offered, and not as originally referred to the Committee. An amendment that would be in order if offered when the bill is first taken up may be held not germane to the bill, as modified, after portions of the bill have been stricken out by amendments in the Committee of the Whole. 8 Cannon § 2910.

§ 16. Adding New Section or Title

An amendment in the form of a new title, section, or paragraph need not necessarily be germane to the title, section, or paragraph immediately preceding it. 8 Cannon §§ 2932, 2935. Deschler-Brown Ch 28 § 19; 99–1, Oct. 8, 1985, p 26551. If offered at the conclusion of the reading, it is sufficient that it be germane to the subject matter of the bill as a whole. 86–1, June 24, 1959, p 11790; 95–2, Feb. 23, 1978, p 4452; 95–2, Aug. 2, 1978, p 23938; 96–1, Aug. 1, 1979, p 21967. Thus, the test of germaneness of an amendment adding a new title at the end of a bill is its relationship to the bill as a whole, as perfected. 98–2, Aug. 10, 1984, pp 23958, 23968, 23974–78; 99–1, July 11, 1985, p 18602; 99–1, Oct. 8, 1985, p 26551. For this reason, an amendment which might not be germane when offered to a particular title of a bill may be considered germane if offered as a new title. 90–1, Oct. 11, 1967, p 28649. This test is applied even though the amend-

ment in effect modifies a provision previously read and passed. 86–1, June 24, 1959, p 11790.

In determining the application of this test, the Chair must take into account whether the text is being read by titles, sections, or paragraphs. Thus, the test of the germaneness of an amendment in the form of a new section to a title of a bill being read by *titles* is the relationship between the amendment and the pending title. 94–1, Sept. 17, 1975, p 28927.

§ 17. Striking Out Text

An amendment striking out language in a bill may be subject to the point of order that it is not germane. 8 Cannon § 2920. A proposal to eliminate portions of a text, thereby extending the scope of its provisions to subjects other than those originally presented, is in violation of the rule requiring germaneness. Deschler-Brown Ch 28 § 20; 86–2, Mar. 23, 1960, p 6381. A motion to strike out a portion of the text of an amendment, thereby extending its scope to a more general subject, is not germane. 96–1, July 17, 1979, p 19066. A pro forma amendment merely to ''strike out the last word'' is germane. 89–1, July 28, 1965, p 18639.

§ 18. Substitute Amendments

A substitute must be germane to the amendment for which it is offered. 96–1, June 26, 1979, pp 16663, 16668, 16673, 16674; 98–1, June 15, 1983, pp 15803, 15809. A substitute for an amendment must be confined in scope to the subject of the amendment (93–2, Mar. 6, 1974, pp 5448, 5449) and must relate to the same portion of the bill being amended by the amendment (94–1, Oct. 8, 1975, p 32428). However, for an amendment changing certain language in a pending section, a substitute changing that text and also additional language in the section may be germane if it has the effect of dealing with the same subject in a related and more limited way. 95–1, May 25, 1977, pp 16648, 16652, 16653.

The test of the germaneness of a substitute amendment is its relationship to the amendment for which offered and not its relationship to the pending bill. See Deschler-Brown Ch 28 § 21; *Manual* § 795. Thus, for an amendment establishing a termination date for the Federal Energy Administration, a substitute not dealing with the date of termination but providing instead a reorganization plan for that agency was ruled out as not germane. 94–2, June 1, 1976, p 16056.

§ 19. Committee Amendments

The rule of germaneness applies to committee amendments as well as those to offered by individual Members. 5 Hinds § 5806; Deschler-Brown Ch 28 § 22. A committee amendment, whether or not in the nature of a substitute, should be germane to the bill as introduced. 90–1, Oct. 10, 1967, p 28406.

§ 20. Recommittals; Instructions to Committees

The germaneness rule applies to instructions in a motion to recommit a bill to a committee. It is not in order to propose as part of a motion to recommit any proposition that would not have been germane if proposed as an amendment to the bill in the House. 5 Hinds §§ 5529–5541; 8 Cannon §§ 2708–2712; *Manual* § 796. In one instance, for example, during consideration of a bill authorizing military expenditures, a motion to recommit with instructions was ruled out on a point of order because it contained provisions seeking to prescribe foreign policy objectives. 90–1, Mar. 2, 1967, p 5155.

The instructions must be germane to the bill as perfected by the House (103–1, Nov. 19, 1993, p _____), even where the instructions do not propose a direct amendment to the bill but merely direct the committee to pursue an unrelated approach (95–2, Mar. 2, 1978, p 5272) or direct the committee not to report the bill back to the House until an unrelated contingency occurs (8 Cannon § 2704). An amendment carrying instructions in the form of a new title at the end of a bill need only be germane to the bill as a whole. 99–2, Sept. 19, 1986, pp 24731 *et seq.*

A point of order against a motion to recommit with instructions has been entertained prior to completion of the reading of such motion where the matter contained in the instructions has been ruled out as not germane when offered as an amendment in the Committee of the Whole. 90–1, Mar. 2, 1967, p 5155.

C. Amendments Imposing Qualifications or Limitations

§ 21. In General; Exceptions or Exemptions

As pointed out earlier in this chapter, a general subject may be amended by a specific proposition of the same class. § 11, supra. Under an extension of this principle an amendment that makes a specific exception to or exemption from a general proposition is germane and in order. 8 Cannon § 3028; Deschler-Brown Ch 28 § 29. Thus, to a section dealing with a designated

class, an amendment exempting from the provisions of the section a certain portion of that class may be germane. 8 Cannon § 3026. Provisions restricting authority may be modified by amendments providing exceptions to those restrictions. 8 Cannon § 3024. Further illustrations of this rule are set forth below.

Held Germane

Text	Amendment
Providing for deportation of aliens...	Exempting a portion of such aliens from deportation (8 Cannon § 3029)
Prohibiting the issuance of injunctions by the courts in labor disputes...	Excepting all labor disputes affecting public utilities (8 Cannon § 3024)
Prohibiting an administrator from setting ceiling prices for domestic crude oil above a certain level...	Exempting new crude petroleum sold by producers of less than 30,000 barrels per day (93–2, Mar. 6, 1974, p 5449)
Limiting discretionary powers conferred in a bill...	Providing an exception from that limitation (93–2, Mar. 6, 1974, p 5449)
Requiring NLRB certification of employee elections of unions as bargaining agents only where there has been a secret ballot...	Making an exception where an employer has undermined the election or is otherwise estopped from challenging it (95–1, Oct. 6, 1977, p 32608)
Denying benefits to recipients failing to meet a certain qualification...	Denying the same benefits to some recipients but excepting others (97–2, July 28, 1982, p 18358)

§ 22. Conditions or Qualifications

A condition or qualification sought to be added by way of amendment must be germane to the provisions of the bill. *Manual* § 800; Deschler-Brown Ch 28 § 30. An amendment is not germane if it makes the effectiveness of a bill contingent upon an unrelated event or determination. 93–1, Dec. 11, 1973, p 40837; 98–1, Nov. 2, 1983, pp 30525–27, 30541, 30542. Thus, an amendment making the implementation of a funding program contingent upon compliance with unrelated legislation is not germane. 98–1, June 16, 1983, p 16060. For discussion of postponements pending contingencies, see § 26, infra.

On the other hand, an amendment imposing a condition may be in order if it imposes a prerequisite that comes within the general subject covered

by the bill. For example, where a bill provided a comprehensive grant program that included within its scope the welfare of law enforcement officers, an amendment requiring states to enact a law enforcement officers' grievance system as a prerequisite to receiving grants under the bill was held to come within the general subject of law enforcement improvement covered by the bill and was held germane. 93–1, June 18, 1973, pp 20099–101.

Assistance to a particular class of recipient covered by a bill may not by amendment be conditioned on actions or inaction by another class of recipient or agent not covered by the bill. 99–2, Mar. 5, 1986, pp 3612, 3613. An amendment conditioning the availability to certain recipients of funds in an authorization bill upon their compliance with federal law *not otherwise applicable to those recipients* and within the jurisdiction of other House committees may be ruled out as not germane. 98–1, June 16, 1983, pp 16059, 16060.

Held Germane

Text	Amendment
Authorizing the funding of a variety of programs that satisfy several stated requirements, in order to accomplish a general purpose...	Conditioning the availability of those funds upon implementation of another program related to that general purpose (93–1, June 18, 1973, pp 20099–101)
Providing for scholarships...	Relating to requirements for eligibility for such scholarships (89–1, Sept. 1, 1965, p 22475)
Authorizing funds for military procurement and construction...	Barring use of the funds in military operations in North Vietnam (90–1, Mar. 2, 1967, p 5143)
Authorizing the insurance of vessels...	Denying such insurance to vessels charging exorbitant rates (8 Cannon § 3023)
Authorizing an agency to undertake certain activities...	Allowing Congress to disapprove regulations issued pursuant thereto (94–2, May 4, 1976, p 12348)
Directing the furnishing of certain intelligence information to the House...	Imposing relevant conditions of security on the handling of such information in committee (102–1, June 11, 1991, p ____)

§ 23. Restrictions or Limitations

Restrictions and limitations sought to be added to a bill by way of amendment must be germane to the provisions of the bill. *Manual* § 800; Deschler-Brown Ch 28 § 32. Thus, to a bill amending a statute, an amendment prohibiting assistance under that act or under any other act for a particular purpose, and affecting laws not being amended by the bill, may be ruled out as not germane. 94–2, May 11, 1976, pp 13419, 13427. Other illustrations of this principle are set forth below.

Held Germane

Text	Amendment
Authorizing change in railroad rates...	Excluding rate increases (8 Cannon § 3022)
Authorizing aid to shipping...	Limiting such aid to ships equipped with life-saving devices (8 Cannon § 3027)
Authorizing use of oil-burning engines on ships...	Prohibiting use of such engines if constructed outside of U.S. (8 Cannon § 3032)
Authorizing the furnishing of medical services and facilities...	Prohibiting the use of such services to perform certain abortions (96–1, July 11, 1979, pp 18022, 18052)
Providing unlimited terms of service for judges...	Restricting terms to four years (8 Cannon § 3031)
Providing for the transfer of specified property solely for the purpose of providing shelter to the homeless and to protect the public health...	Requiring reversion of the property if not used for that charitable purpose as defined under a provision of the Internal Revenue Code (99–2, June 5, 1986, pp 12592–94)

Held Not Germane

Text	Amendment
Repairing naval vessels...	Prohibiting such repairs in navy yards when possible to make at less expense elsewhere (8 Cannon § 3034)

§ 24. — Limitations on Discretionary Powers

To a proposition conferring discretionary authority, an amendment limiting or restricting the exercise of that authority is germane. 8 Cannon § 3022; Deschler-Brown Ch 28 § 33; 93–2, Mar. 5, 1974, pp 5309, 5310; 93–2, Mar. 6, 1974, pp 5436, 5437; 95–2, Aug. 2, 1978, p 23730. For example, where a bill continues the authority of an official to set maximum interest rates on loans, an amendment placing a limit on such authority is germane. 91–1, Sept. 29, 1969, p 27351.

An amendment limiting the exercise of a discretionary power conferred in a bill may be germane even though it incorporates as a term of measurement a qualification or condition applicable to entities beyond the scope of the bill. 95–2, July 19, 1978, p 21704. Thus, to a proposition that the Administrator of Veterans' Affairs be authorized to establish a maximum interest rate for loans, an amendment stating that ''the rate fixed shall not be higher than the FHA rate'' was held germane. 91–1, Sept. 29, 1969, p 27351.

While a proposition reorganizing existing discretionary agency authority may be amended by imposing limitations on the exercise of those functions, an amendment directly changing policies in the substantive law to be administered by that agency is not germane. 93–2, Mar. 6, 1974, pp 5433–36.

Held Germane

Text	Amendment
Authorizing funds for the National Aeronautics and Space Administration...	Prohibiting contracts for ''support'' services except where certain cost comparisons had been made (90–1, June 28, 1967, p 17748)
Conferring authority on the President to establish rules for ordering priorities among petroleum users and requiring that vital services in the areas of education and transportation shall receive priority...	Restricting that regulatory authority by requiring that petroleum products allocated for public school transportation be used only between the student's home and the school closest thereto (93–1, Dec. 13, 1973, pp 41267–69)
Prescribing the functions of a new Federal Energy Administration by conferring wide discretionary powers on the administrator...	Limiting the authority of the administrator in setting prices for propane gas by requiring an equitable allocation of production costs (93–2, Mar. 5, 1974, pp 5309, 5310)

Held Germane—Continued

Text	Amendment
Prescribing the functions of a new Federal Energy Administration...	Prohibiting the promulgation of petroleum rationing rules without prior approval by Congress (93–2, Mar. 6, 1974, p 5439)
Authorizing an agency to undertake certain activities...	Providing that regulations issued pursuant to that authority may be disapproved by Congress (94–2, May 4, 1976, pp 12344, 12345, 12348)
Continuing U.S. participation under the International Development Association Act...	Directing opposition in that forum to loans to nations not party to a nuclear nonproliferation treaty (93–2, July 2, 1974, p 22029)
Containing diverse provisions relating to authorities of the Department of Defense...	Precluding the use of certain land for deployment of a weapons system pending a study (96–2, May 21, 1980, pp 11972, 11973)

§ 25. — Restrictions on Use of Funds

Amendments that merely place restrictions on the use of funds that are authorized or referred to in the bill are generally upheld as germane. Deschler-Brown Ch 28 § 34; 93–2, Aug. 15, 1974, pp 28423, 28438, 28439. An amendment seeking to restrict the use of funds must be limited to the subject matter and scope of the provisions sought to be amended. *Manual* § 800. The amendment must be confined to the agencies, authority, and funds addressed by the bill and may not be more comprehensive in scope. 94–2, July 27, 1976, pp 24040, 24041. A limiting amendment may be held not germane if it places restrictions on funds authorized or appropriated in other bills. 90–1, Aug. 24, 1967, p 24002. To be germane, the amendment restricting the use of funds must relate solely to those funds and may not apply to another related category of funds. 96–2, Mar. 6, 1980, pp 4970, 4971.

An amendment limiting the use of funds by a particular agency funded in a general appropriations bill may be germane at more than one place in the bill; subject to clauses 2(c) and (d) of Rule XXIthe amendment may be offered when the paragraph carrying such fund is pending, or to an appropriate ''general provision'' portion of the bill affecting that agency or all agencies funded by the bill. See 96–1, July 16, 1979, p 18807.

Held Germane

Text	Amendment
Authorizing supplemental appropriations for military procurement, development, and construction...	Declaring that none of those funds be used to carry out military operations in North Vietnam (90–1, Mar. 2, 1967, p 5142)
Appropriating funds for an additional Washington airport...	Placing a limit on the amount to be used for the construction of an access road (86–1, June 29, 1959, p 12121)
Authorizing an investigation and incidental travel to be undertaken by a committee of the House...	Placing restrictions on the funds permitted to be used in such travel (88–1, Jan. 31, 1963, p 1547)
Authorizing appropriations to enter into contracts for the development of synthetic fuels...	Prohibiting the use of the funds to enter into contracts with any major oil company (96–1, June 26, 1979, pp 16694–96)
Authorizing appropriations for contributions to the United Nations Environmental Fund...	Prohibiting the use of those funds to assist in the reconstruction of North Vietnam (93–1, May 15, 1973, pp 15747, 15752)
Authorizing appropriations for the National Science Foundation...	Prohibiting the use of those funds for research on a live human fetus outside the womb (93–1, June 22, 1973, p 20946)
To establish a rural electrification and telephone revolving fund for insured and guaranteed loans...	To provide that no such funds be used outside the United States or its possessions (93–1, Apr. 4, 1973, pp 10395, 10396)
Continuing U.S. participation under the International Development Association Act...	Prohibiting the use of U.S. contributions as loans for the purchase of nuclear weapons or materials (93–2, July 2, 1974, pp 22026, 22028)
Restricting the availability of funds to a certain category of recipients...	Further restricting the availability of those funds to a subcategory of the same recipients (96–1, Sept. 25, 1979, pp 26135 *et seq.*)

Held Germane—Continued

Text	Amendment
Providing assistance for mass transportation programs and permitting certain school systems to be eligible applicants for school bus subsidies...	Prohibiting the use of funds to implement programs intended to overcome racial imbalance in school systems (93–2, Aug. 15, 1974, pp 28423, 28438, 28439)
Authorizing funds and limited use of troops for a specific purpose...	Denying funds for deployment of troops beyond a certain period of time (94–1, Apr. 23, 1975, p 11508)

Held Not Germane

Text	Amendment
Changing a dollar amount in operating expenses for an agency...	Prohibiting a certain activity and the use of any funds therefor (92–2, June 7, 1972, pp 19920, 19927)
Establishing a new Department of Education and addressing only the administrative structure of the department...	Prohibiting the use of funds to compel the transportation of students or teachers to establish racial or ethnic balance (96–1, June 12, 1979, pp 14466, 14485, 14486)
To approve an increase in the U.S. quota to the International Monetary Fund and to authorize dealing in gold in connection therewith...	Prohibiting the alienation of gold to *any* international organization or its agents, or to *any* person or organization acting for certain purchasers (94–2, July 27, 1976, pp 24040, 24041)
Striking out a provision prohibiting the use of funds in the bill for a designated oil land lease in California...	Prohibiting the use of funds in the bill *or in any other act* for that lease *and other* California leases (98–1, Oct. 5, 1983, pp 27319, 27320)

§ 26. Postponing Effectiveness Pending Contingency

An amendment delaying the operation of proposed legislation pending an unrelated contingency is not germane. *Manual* § 800; 8 Cannon § 3037; Deschler-Brown Ch 28 § 31; 90–1, Aug. 24, 1967, pp 23977, 24002; 94–1, Apr. 23, 1975, p 11512; 94–1, Sept. 25, 1975, p 30227. Thus, an amendment making the implementation of federal legislation contingent upon the

enactment of unrelated state legislation is not germane. 90–1, June 29, 1967, p 17921. And it is not germane for an amendment to render a measure contingent upon an unrelated congressional action. For example, to a bill authorizing appropriations for radio broadcasting to Cuba, an amendment prohibiting use of those funds until Congress has considered a constitutional amendment mandating a balanced budget was ruled out as nongermane, imposing an unrelated contingency requiring separate congressional action on another subject. 97–2, Aug. 10, 1982, p 20250.

Amendments that unconditionally postpone the effective date of the legislation to a date certain have been upheld as germane. Thus, to a title of a bill establishing procedures permitting either House of Congress to disapprove an impoundment of appropriated funds by the President, an amendment delaying the effective date of that title to a day certain was held germane. 93–1, July 25, 1973, p 25828. Similarly, to an amendment abolishing the Federal Energy Administration on a date certain and transferring some of its functions to other agencies at that time, an amendment delaying the termination date of that agency for one year was held germane. 94–2, June 1, 1976, pp 16025, 16026.

An amendment may make the effectiveness of a bill subject to a condition if that condition is related to the provisions of the bill. 94–1, Apr. 23, 1975, p 11529; 95–2, Aug. 2, 1978, p 23933. An amendment delaying operation of a proposed amendment pending an ascertainment of a fact is germane when the fact to be ascertained relates solely to the subject matter of the bill. 8 Cannon § 3029; 97–2, Dec. 15, 1982, pp 39057–61. But an amendment is not germane if it delays the effectiveness of a bill contingent upon actions not involved in the administration of the affected program and which extend in scope beyond the authorities contained in the bill. 96–2, Nov. 14, 1980, pp 29615–17. Likewise, an amendment to an appropriation bill delaying the availability of the appropriation pending an unrelated contingency—the enactment of certain revenue legislation into law—is not germane. 96–1, Oct. 25, 1979, p 29639.

Held Germane

Text	Amendment
Authorizing funds for elementary and secondary education...	Barring use of funds ''so long as the present ... Commissioner of Education occupies that office'' (89–2, Oct. 6, 1966, p 25583)

Held Germane—Continued

Text	Amendment
Relating to an expenditure of funds to pay for a cost-of-living salary increase for Members...	Restricting their availability during months in which there is an increase in the public debt (96–1, Sept. 25, 1979, pp 26150–52)
Authorizing appropriations for humanitarian and evacuation assistance to war refugees in South Vietnam...	Making that authorization contingent on a report to Congress on the costs of a portion of the evacuation program (94–1, Apr. 23, 1975, p 11529)
Authorizing defense assistance to a foreign nation...	Delaying that assistance until that nation's former ambassador testified before a House committee (95–2, Aug. 2, 1978, p 23933)

Held Not Germane

Text	Amendment
Extending laws relating to housing and urban renewal...	Barring appropriation for the purposes of the bill until enactment of legislation raising additional revenue (86–1, May 21, 1959, p 8840)
Appropriating funds for emergency fuel assistance...	Prohibiting the obligation of such funds before the enactment of an oil windfall profit tax (96–1, Oct. 25, 1979, p 29639)
Authorizing funds for construction of atomic energy facilities...	Making such project contingent upon the enactment of federal or state fair housing measures (90–1, June 29, 1967, p 17921)
Authorizing appropriations for the Arms Control and Disarmament Agency...	Delaying the authorization until the Soviet Union ''ceases to supply military articles to our enemy in Vietnam'' (90–2, Mar. 6, 1968, p 5426)
Authorizing funds for foreign assistance...	Making aid to a nation contingent upon the enactment of tax reform measures by that nation (90–1, Aug. 24, 1967, p 23977)

Held Not Germane—Continued

Text	Amendment
Authorizing military assistance to Israel and funds for the United Nations Emergency Force in the Middle East...	Postponing the availability of funds to Israel until the President certifies the existence of a designated level of energy supplies for the U.S. (93–1, Dec. 11, 1973, p 40837)
Authorizing radio broadcasting to Cuba...	Prohibiting use of broadcasting funds until Congress has considered a constitutional amendment mandating a balanced budget (97–2, Aug. 10, 1982, p 20250)
Authorizing the development of certain military missile systems...	Making expenditures contingent on the impact of U.S. grain sales on Soviet military preparedness (98–1, July 21, 1983, p 20189)
Rescinding an agency's funds for motor vehicle seat belt and passive restraint *research and education*...	Conditioning the availability of *all* funds pending state compliance with federal standards for *mandatory seat belt use* (99–1, July 31, 1985, pp 21832–34)

D. Relation to Existing Law

§ 27. Amendments to Bills Amending Existing Law

The germaneness rule may provide the basis for a point of order against an amendment that is offered to a bill amending existing law. A germaneness point of order may be sustained where the proposed amendment relates to the existing law rather than to the pending bill. 8 Cannon §§ 2916, 3045; Deschler-Brown Ch 28 § 35; *Manual* § 799. Unless a bill so extensively amends existing law as to open up the entire law to amendment, the germaneness of an amendment to the bill depends upon its relationship to the subject of the bill and not to the entire law being amended. 94–1, Oct. 28, 1975, p 34037. A bill amending several sections of one title of the U.S. Code does not necessarily bring the entire title under consideration so as to permit an amendment to any portion thereof. 90–1, Oct. 11, 1967, p 28649. See also 102–1, Oct. 17, 1991, p ____.

Where a bill amends existing law in one narrow particular, an amendment proposing to modify such existing law in other particulars will gen-

erally be ruled out as not germane. 86–1, Sept. 4, 1959, p 18841; 90–1, Aug. 16, 1967, p 22768; 92–1, Dec. 8, 1971, p 45535. Likewise, if a bill amending existing law relates to a single subject or has a single purpose, a proposed amendment is not germane that proposes to modify the law further in a manner not related to the purpose of the bill. 89–1, July 28, 1965, pp 18631, 18633; 93–2, Feb. 5, 1974, p 2064. Where a proposition narrowly amends one section of existing law by changing a specific program therein, that section of law is not open to a further amendment that would enlarge the scope of the pending proposition. 92–1, Dec. 8, 1971, p 45536.

To a proposition modifying a limited portion of existing law, an amendment further modifying that portion may be germane. 87–1, Mar. 24, 1961, p 4797. Such an amendment may add exceptions or definitions modifying the proposition if related to the same subject. 95–1, Oct. 6, 1977, p 32608. But an amendment repealing the law is not germane. 88–2, Mar. 12, 1964, p 5125. Other amendments that have been ruled out as beyond the scope of propositions to change existing law are set out below:

Held Not Germane

Text	Amendment
Amending a section of title 5 of the U.S. Code granting certain rights to employees of executive agencies...	Extending those rights to legislative branch employees as defined in a different section of that title (94–1, Oct. 28, 1975, p 34037)
Amending a portion of an existing law to extend the authorization for U.S. contributions to the International Monetary Fund...	Amending another section of that law mandating that the total budget outlays of the federal government shall not exceed its receipts (98–1, Aug. 3, 1983, p 22679)

§ 28. Amendments to Bills Repealing Existing Law

Where a bill repealing several sections of an existing law is pending, an amendment proposing to repeal the entire law may be germane. Deschler-Brown Ch 28 § 37. Where the bill seeks to repeal only one provision of an existing law, an amendment modifying that provision in existing law (rather than repealing it) may also be germane. 91–1, Oct. 30, 1969, p 32466. On the other hand, to a bill repealing one narrow subsection of existing law, an amendment proposing a comprehensive revision of the whole law is not germane. 91–1, Oct. 30, 1969, p 32464.

Held Not Germane

Text	Amendment
Seeking the repeal of Chinese Exclusion Acts...	Relating to immigration generally (78–1, Oct. 21, 1943, p 8633)
Repealing a narrow provision of an existing act...	Expressing congressional policy as to the pending bill *and* to the administration of the whole act (91–1, Oct. 30, 1969, p 32465)
Repealing a provision of existing labor law, thereby depriving the states of the power to prohibit ''closed shop contracts''...	Modifying the law to permit states to bar the application of ''closed shop'' agreements to veterans of military service (89–1, July 28, 1965, p 18636)
Repealing a narrow subsection of law relating to the order of induction of selective service registrants...	Placing restrictions on the assignment of personnel to Vietnam without their consent (91–1, Oct. 30, 1969, p 32466)

§ 29. Amendments to Bills Incorporating Other Laws

A bill incorporating by reference procedural requirements contained in other Acts may be broad enough in scope to permit an amendment similarly referring to, but not directly amending, other statutes, and intended to accomplish the result sought to be effected by the portion of the bill to which offered. 92–2, Aug. 2, 1972, pp 26487, 26493. Thus, to a bill including requirements for certification of federal land use activities as compatible with approved state management programs and incorporating by reference certain statutory provisions, an amendment applying the procedures contained in those statutes to approval of such federal land use programs in lieu of the certification procedures in the bill was held germane. 92–2, Aug. 2, 1972, pp 26487, 26493. On the other hand, to a bill citing but not amending a law on one subject, an amendment incorporating that law by reference to broaden its application to the subject of the bill is not germane. 95–2, Oct. 5, 1978, p 33818.

§ 30. Amendments to Bills Continuing or Extending Existing Laws

A bill extending an existing law may open up the law being extended to germane amendments. Deschler-Brown Ch 28 § 39; 91–1, Sept. 29, 1969, p 27342. A bill continuing and reenacting an existing law may be amended

by a proposition modifying in a germane manner the provisions of the law being extended. 94–2, June 1, 1976, p 16025. See also 88–1, Oct. 31, 1963, p 20728; 94–2, June 1, 1976, p 16046. To a bill extending an existing law in modified form, an amendment proposing further modification of the law is germane. 91–1, Apr. 23, 1969, p 10067. But while a bill ''extending existing law'' may open up the law being extended to germane amendments, a proposition that merely extends an official's authority under that law does not necessarily open up the basic law to amendment. 91–1, Sept. 29, 1969, p 27342.

Held Germane

Text	Amendment
Continuing for one year the Mexican farm labor program...	Requiring a determination that reasonable efforts have been made to hire domestic workers (88–1, Oct. 31, 1963, p 29728)
Amending and extending the Elementary and Secondary Education Act...	Providing that no funds in the act be used for the transportation of students or teachers ''in order to meet provisions of'' the Civil Rights Act of 1964 (91–1, Apr. 23, 1969, p 10067)
Reenacting a law to extend the existence of the Federal Energy Administration, including the authority to conduct energy programs...	Restricting the method of submitting energy action proposals to Congress (94–2, June 1, 1976, p 16046)
Extending the existence of the Federal Energy Administration and authorizing appropriations for that agency...	Requiring that agency to promulgate regulations to assure that the agency hearings be conducted in certain areas (94–2, June 1, 1976, p 16058)

Held Not Germane

Text	Amendment
Extending the authority of the Administrator of Veterans' Affairs to establish a maximum interest rate for insured loans to veterans...	Altering provisions of existing law and modifying the authority of the administrator to manage the loan program (91–1, Sept. 29, 1969, p 27342)
Extending the school milk program and making ''preschool programs operated as part of the school system'' eligible for benefits...	Further extending such benefits to programs operated by nonprofit institutions in depressed areas (89–2, Sept. 1, 1966, p 21656)

§ 31. Amendments Changing Law to Bills Not Changing That Law

Generally

An amendment that amends a law not contemplated in the bill under consideration and not related to the text before the House is subject to a germaneness point of order. Thus, to a bill amending one existing law, an amendment changing the provisions of another law is not germane. 90–1, Sept. 28, 1967, p 27214. Likewise, to a bill making appropriations for the current fiscal year, an amendment permanently changing existing law is not germane and thus is not in order even though it tends to reduce expenditures for that year. 91–1, May 21, 1969, p 13269.

However, the germaneness of such an amendment may be affected by other amendments that broaden the scope of the pending bill. For example, where a bill authorizing foreign military assistance was broadened by amendment to address permanent law relating to economic relations with foreign nations, an amendment to remove military and economic trade sanctions against Rhodesia was held germane to the bill as a whole in its perfected form. 95–2, Aug. 2, 1978, p 23938.

Set out below are precedents illustrating the rule that an amendment is subject to a point of order if it amends a law that is not contemplated in the bill under consideration.

Held Not Germane

Text	Amendment
Reorganizing existing discretionary governmental authority and vesting it in a new agency...	Directly changing policies in the substantive law to be administered by that agency (93–2, Mar. 6, 1974, pp 5433–36)

Held Not Germane—Continued

Text	Amendment
Consolidating certain functions under a new agency and limiting its policy-making authority to that contained in existing law...	Prescribing new policy by amending a law not amended by the bill (93–2, Mar. 5, 1974, pp 5306–09)
Providing in part for increased salaries for Members of Congress and legislative employees...	Relating to audits of financial transactions of the House and the Architect of the Capitol under another law (88–2, Mar. 12, 1964, p 5125)
Amending the Fair Labor Standards Act and concerned with the effect of imports on the domestic labor market...	Proposing changes in the Tariff Act of 1930 and concerned with the importation of merchandise from Communist nations (90–1, Sept. 28, 1967, p 27214)
Establishing a Federal Energy Administration but not amending existing laws relating to energy conservation policy...	Repealing the Emergency Daylight Saving Time Energy Conservation Act (93–2, Mar. 7, 1974, pp 5653, 5654)
Regulating the importation of liquefied natural gas, but not directly amending the Natural Gas Act...	Changing the Natural Gas Act to prohibit the FPC from regulating the price of natural gas at the well-head (93–1, Dec. 14, 1973, pp 41723–25)
Changing certain Acts to provide for market adjustment and price support programs for wheat and feed grains...	Proposing modification of another Act to direct the President to conduct an investigation into imports of specified agricultural products (86–2, June 23, 1960, p 14060)
Changing for one year an existing law establishing price supports for several agricultural commodities...	Waiving the provisions of another law relating to price supports for another agricultural commodity (94–1, Mar. 20, 1975, p 7667)

Waivers or Repeals

An amendment repealing existing law has been held not germane to a bill not amending that law. 93–2, Mar. 7, 1974, pp 5653, 5654. An amendment may be subject to a point of order on the basis that it contains the language ''notwithstanding any other provision of law'' if it has the effect of waiving a statute not amended by the bill. 94–1, Mar. 20, 1975, p 7667.

In one such instance, the Chair noted that the waivers in the bill were waivers of a narrow class of existing laws, whereas the amendment waived various unspecified laws not within the scope of the pending measure. 96–1, June 26, 1979, pp 11683–86.

Effect of Disclaimers

Ordinarily, the inclusion of language in a bill ''disclaiming'' any substantive effect of the bill on other provisions of law would not render germane amendments which do in fact affect other law. But where disclaimer language in a bill is accompanied by other provisions changing a category of law cited in the disclaimer, an amendment further addressing the relationship between the bill and laws cited in the disclaimer may be germane. 98–1, Nov. 2, 1983, pp 30525, 30527, 30542, 30545–47.

E. House-Senate Relations

§ 32. Senate Germaneness Rules

In contrast to the House practice, there is no general Senate rule prohibiting nongermane amendments. However, questions of germaneness of amendments to general appropriation bills are submitted to the Senate without debate under Rule XVI. The Chair does not rule on the question. 97–2, Mar. 31, 1982, pp 6166 *et seq.* Another rule prohibits nongermane amendments to bills after cloture has been invoked. See Senate Rule XXII clause 2. In addition, pursuant to unanimous-consent agreements, the Senate sometimes prohibits nongermane amendments to particular bills (81–2, Apr. 5, 1950, p 4774), or may prohibit a certain class of nongermane amendments to a bill (81–2, Dec. 12, 1950, p 16461). See *Senate Procedure*, Riddick, S. Doc. No. 101–28 (1992), p 854. Under § 305 of the Budget Act, amendments offered in the Senate to a concurrent resolution on the budget must be germane; and under § 310, a similar restriction applies to amendments to reconciliation bills. *Manual* § 1007.

§ 33. Motions to Instruct Conferees

The rule that amendments must be germane applies to amendments to a motion to instruct conferees. 8 Cannon §§ 3230, 3235; Deschler-Brown Ch 28 § 28. The test of an amendment to a motion to instruct conferees is the relationship of the amendment to the subject matter of the House and Senate versions of the bill (*Manual* § 796) and not to the original motion to instruct.

Where an amendment in the nature of a substitute has been proposed by one House for the entire bill passed by the other House, provisions in

either the bill or the substitute may be addressed in motions to instruct managers. 8 Cannon § 3230.

§ 34. Senate Provisions in Conference Reports and in Amendments in Disagreement

Formerly, a Senate amendment was not subject to the point of order that it was not germane to the House bill. 8 Cannon § 3425. Today, under changes in the rules enacted in 1972, points of order may be made, and if sustained, separate votes may be demanded on portions of Senate amendments and conference reports containing language that would not have been germane if offered in the House. Rule XXVIII clauses 4 and 5 (*Manual* § 913b).

Clause 4 of Rule XXVIII permits points of order against language in a conference report that was originally in the Senate bill or amendment and which would not have been germane if offered to the House-passed version, and permits a separate motion to reject such portion of the conference report if found nongermane. 99–2, Oct. 15, 1986, p 31498. For purposes of that rule, the House-passed version, against which Senate provisions are compared, is that finally committed to conference, taking into consideration all amendments adopted by the House, including House amendments to Senate amendments. 98–1, July 28, 1983, p 21401; Deschler-Brown Ch 28 § 27.

Pursuant to Rule XXVIII clause 4, where the Speaker sustains a point of order that a portion of a conference report containing a Senate amendment is not germane to the House bill, a motion to reject that portion of the conference report is in order and is subject to 40 minutes of debate. 93–2, Oct. 10, 1974, pp 35181 *et seq.*; 95–2, Oct. 12, 1978, p 36461; 95–2, Oct. 14, 1978, p 38559.

The Member representing the conference committee recognized in opposition to a motion to reject a nongermane Senate provision pursuant to clause 4 of Rule XXVIII, and not the proponent of the motion to reject, has the right to close debate thereon. After the 40 minutes of debate permitted by that rule, it is then in order, following the disposition of the motion to reject, to make further points of order and motions to reject. If any such motion is adopted, the pending motion (which may be offered by the manager of the conference report) is, in the case of a House bill with a Senate amendment, to recede from disagreement to the Senate amendment and concur therein with an amendment consisting of the portion of the conference report not rejected. 99–2, Oct. 15, 1986, p 31506.

Clause 5 Rule XXVIII permits points of order against motions to concur or concur with amendment in nongermane Senate amendments, the stage

of disagreement having been reached. If such a point of order is sustained, a separate motion to reject such nongermane matter is permitted. *Manual* §§ 797, 913c. Clause 5 is not applicable to a provision contained in a motion to recede and concur with an amendment that is not contained in any form in the Senate version, the only requirement in such circumstances being that the motion as a whole be germane to the Senate amendment as a whole under the longstanding House germaneness rule (clause 7, Rule XVI). 95–2, Oct. 4, 1978, pp 33502–506; 100–1, June 30, 1987, p 18294.

Held Not Germane

House Bill	Senate Amendment
Continuing the operations of an executive department for one year...	Prohibiting the availability of any funds appropriated for foreign military base agreements absent congressional approval (93–1, Sept. 11, 1973, pp 29243–46)
Exempting from tariff duty certain equipment and repairs for vessels operated by the United States...	Extending benefits under the unemployment compensation program (93–2, July 31, 1974, pp 26082 *et seq.*)
Requiring that a percentage of U.S. oil imports be carried on U.S. flag vessels...	Dealing with the construction of vessels and with certain anti-pollution requirements (93–2, Oct. 10, 1974, pp 35181 *et seq.*)
Containing several diverse amendments to the Internal Revenue Code to provide individual and business tax credits...	Authorizing appropriations for special payments to social security recipients (94–1, Mar. 26, 1975, p 8931)
Improving automotive fuel efficiency by imposing fuel economy standards upon manufacturers...	Providing loan guarantees for automotive research and development (94–1, Dec. 15, 1975, p 40677)

The House has by unanimous consent concurred in a nongermane Senate amendment to House amendments to a Senate bill (91–2, Apr. 23, 1970, p 12874), and in a nongermane Senate amendment to a House private bill (92–1, Dec. 9, 1971, p 45872).

§ 35. Amendments to Senate Amendments

An amendment offered in the House to a Senate amendment must ordinarily be germane to the particular Senate amendment to which it is offered, it not being sufficient that it be germane to the provisions of the bill if it

merely inserts new matter and does not strike out House provisions. 5 Hinds § 6188; 8 Cannon § 2936; *Manual* § 797. Thus, when considering a Senate amendment reported in disagreement by conferees, a proposal to amend must be germane to the Senate amendment. 87–1, Mar. 29, 1961, pp 5275, 5277; 96–2, Sept. 30, 1980, pp 28503, 28504. While a Senate amendment proposing legislation on a general appropriation bill is subject to an amendment of a similar character in the House, the requirement remains that the House amendment be germane to the Senate amendment. 91–2, Dec. 15, 1970, p 41504.

The test of the germaneness of an amendment offered to a motion to concur in a Senate amendment with an amendment is the relationship between the offered amendment and the motion, and not between that amendment and the Senate amendment to which the motion has been offered. 93–1, Aug. 3, 1973, pp 21821 *et seq.*

The test of germaneness of an amendment in the nature of a substitute to a Senate amendment—proposed in a motion to concur therein with an amendment—is the relationship between the proposed amendment in its entirety and the Senate amendment (and not the relationship between any one provision of the amendment and any one provision of the Senate amendment). 95–2, Oct. 4, 1978, p 33506.

The rule of germaneness applies to motions to recede and concur in a Senate amendment with an amendment. 92–1, July 29, 1971, p 28053. Such a motion must be germane to the Senate amendment. 98–2, Aug. 10, 1984, pp 23988, 23989. But where a Senate amendment proposes to strike out language in a House bill, the test of the germaneness of a motion to recede and concur with an amendment is the relationship between the language in the motion and the provisions in the House bill proposed to be stricken by the Senate amendment. *Manual* § 797; 78–1, June 8, 1943, p 5511; 78–1, June 15, 1943, p 5899; 93–2, Dec. 12, 1974, pp 39272, 39273.

Held Germane

Senate Amendment	House Amendment
Appropriating funds for a Senate office building extension, providing a funding ceiling on such extension, and providing for the transfer of personnel and equipment to such extension...	Reducing the appropriation and the funding ceiling, and providing that such extension upon completion meet certain personnel needs (96–1, Aug. 2, 1979, pp 22007 *et seq.*)

Held Germane—Continued

Senate Amendment	House Amendment
Containing diverse provisions relating to the organization and administration of the federal courts, including appointment of additional district and circuit judges...	Containing comparable provisions and in addition permitting courts of appeals of a certain size to establish administrative units (95–2, Oct. 4, 1978, pp 33502–506)
Appropriating funds for termination of the civil supersonic aircraft...	Appropriating for termination of payment of the airlines' contribution to development costs (92–1, July 29, 1971, p 28053)

Held Not Germane

Senate Amendment	House Amendment
To prohibit the use of specified funds as compensation for certain former employees...	Enlarging the class of persons ineligible for such compensation (88–1, May 14, 1963, p 8505)
Prohibiting use of funds in a general appropriation bill for only one basing mode for the MX missile...	Authorizing appropriations for research and development of another weapons system (96–1, Dec. 12, 1979, pp 35520, 35521)
Providing for payment, from the Senate contingent fund, of certain additional travel expenses incurred by Senate employees...	Providing additional travel allowances to Members of the House from the contingent fund (87–1, Mar. 29, 1961, pp 5275, 5277)
Striking a provision in a general appropriation bill that precluded the use of funds therein by the Environmental Protection Agency to control air pollution by regulating parking facilities...	Temporarily prohibiting the use of those EPA funds to implement any plan requiring the review of *any* indirect sources of air pollution (93–2, Dec. 12, 1974, pp 39272, 39273)
Appropriating funds for asbestos hazards abatement in schools...	Earmarking funds for the refinancing of a recycling program of a specified city (98–2, Aug. 10, 1984, pp 23988, 23989)

F. Procedural Matters; Points of Order

§ 36. In General

A point of order may be raised against an amendment on the ground that it is not germane to the proposition to which it has been offered:

> OPPONENT: Mr. Speaker, I make [*or reserve*] the point of order that the amendment is not germane to the text [*section, paragraph, or other proposition*].
>
> THE SPEAKER: The Chair will hear the gentleman.

If any part of an amendment is subject to a point of order, the entire amendment is subject to such point of order. 5 Hinds § 5784; 8 Cannon §§ 2922, 2980. The effect of a ruling by the Chair that an amendment is not germane is usually that the amendment is barred in its present form and at the place at which it is offered. However, the ruling of the Chair may be appealed. 79–1, Oct. 19, 1945, p 9868. On one occasion, the Committee of the Whole by unanimous consent voted on an amendment that had been ruled out of order as not germane. 82–1, Apr. 12, 1951, p 3781.

Ordinarily, a point of order based on the rule of germaneness will state the grounds for asserting the nongermaneness of the amendment. Deschler-Brown Ch 28 § 43.

Burden of Proof

The burden of proof of the germaneness of an amendment rests on its proponent. 8 Cannon § 2995; 87–2, July 12, 1962, p 13431. Where an amendment is equally susceptible to more than one interpretation, and the proponent fails to carry the burden of showing the applicability of that interpretation under which the amendment can be upheld, the Chair may rule it out of order. 94–1, June 20, 1975, p 19967.

§ 37. Waiver of Points of Order

Waiver by Failure to Raise Point of Order

The germaneness rule is not self-enforcing. It may be waived by the mere failure to raise a timely point of order. The Chair will not ordinarily apply the rule of germaneness to bar an amendment unless a timely point of order is actually raised against the amendment. An amendment permitted to remain because no point of order as to its germaneness was raised may itself be subject to germane amendment (92–1, Oct. 20, 1971, pp 37075–79). Of course, the fact that no point of order is made against a particular amendment does not waive points of order against subsequent amendments of a related nature. Deschler-Brown Ch 28 § 43.

Waiver by Special Rule

Points of order against nongermane amendments may be waived pursuant to the terms of a special rule from the Committee on Rules. The issue of germaneness cannot be raised against an amendment when all points of order against that amendment have been waived. 88–2, Feb. 10, 1964, p 2738. Thus, where a bill is being considered under the provisions of a special rule that specifies that committee amendments shall be in order, ''any rule of the House to the contrary notwithstanding,'' no issue can properly be raised as to the germaneness of such amendments. 86–2, May 18, 1960, p 10575.

The Committee on Rules may report a special rule altering the ordinary test of the germaneness of an amendment, such as rendering only one portion of an amendment subject to a germaneness point of order, while preserving consideration of the remainder of the amendment and waiving germaneness points of order with respect thereto. 95–2, May 23, 1978, p 15094 [H. Res. 1188]; 95–2, Aug. 11, 1978, p 25705 [H. Res. 1307]. See also 95–2, Feb. 6, 1978, p 2388 [H. Res. 982].

Where a special rule waives germaneness points of order against the consideration of a designated amendment, and does not specifically preclude the offering of amendments thereto, germane amendments to that amendment may be offered. 94–1, July 22, 1975, p 23991.

§ 38. Timeliness of Points of Order

The general rule is that a point of order against an amendment as not germane must be made or reserved immediately after the amendment is read and comes too late once debate has been had on the amendment. 94–2, Feb. 4, 1976, p 2390; 95–1, Oct. 19, 1977, p 34217. The point of order against the amendment must be raised prior to debate thereon and comes too late if the proponent has commenced his remarks. 94–1, June 16, 1975, p 19073. The rereading of the amendment by unanimous consent after there has been debate does not permit the intervention of a point of order against the amendment. 92–1, Nov. 4, 1971, p 39302. However, the Chair may entertain a point of order against the amendment by a Member who states that he had been on his feet, seeking recognition for that purpose, when the debate began (90–1, Sept. 26, 1967, p 26878), or who was on his feet seeking recognition at the time the amendment was read (91–1, Sept. 29, 1969, p 27351). Deschler-Brown Ch 28 § 44.

Reservation of a point of order against an amendment or the continuation of such a reservation after some debate on the amendment may be permitted by leave of the Chair, but the Chair may demand that the point of

order be disposed of prior to further debate on the amendment. 93–1, Apr. 4, 1973, pp 10395, 10396.

Since a point of order against the germaneness of an amendment must be made prior to its consideration, where points of order have been waived against a specific amendment which is then altered by amendment, a point of order will not lie against the amendment on the ground that, as modified, it no longer comes within the coverage of the waiver. 94–1, July 22, 1975, p 23990.

A point of order against a motion to recommit with instructions has been made prior to completion of the reading of such motion where the matter contained in the instructions had been ruled out as not germane when offered as an amendment in the Committee of the Whole. 90–1, Mar. 2, 1967, p 5155. But such a point of order comes too late after the proponent of the motion has been recognized for five minutes of debate in the House and has yielded for a parliamentary inquiry. 92–1, June 2, 1971, pp 17491–95.

§ 39. Debate on Points of Order

Where a germaneness point of order is made, the Chair ordinarily permits argument thereon by the Member making the point of order in support of his position, and by the proponent of the amendment in defense of the amendment. The Chair may in his sole discretion also permit arguments by others who wish to speak on either side of the issue. Deschler-Brown Ch 28 § 43. Debate time on the point of order is within the discretion of the Chair. 82–1, Apr. 13, 1951, p 3909. All such debate must be confined to the question of germaneness and cannot go to the merits of the amendment. 90–1, July 19, 1967, p 19412; 92–2, Sept. 6, 1972, p 29588.

§ 40. Anticipatory and Hypothetical Rulings

The Chair will ordinarily refuse to entertain a parliamentary inquiry on the germaneness of an amendment which has not yet been offered, since the Chair does not deliver anticipatory rulings. Deschler-Brown Ch 28 § 46. See also 99–1, Dec. 12, 1985, pp 36166, 36167, 36170, 36172. Thus, the Chair has declined to indicate, in response to a parliamentary inquiry, whether a substitute, if defeated, would thereafter be germane and in order if subsequently offered as an amendment in the form of a new section. 91–2, July 27, 1970, p 25811.

Since the Chair does not rule on hypothetical questions, the Chair declines to rule in advance with regard to the germaneness of instructions accompanying a motion to recommit. 88–1, Dec. 19, 1963, p 25249. Since the

Chair does not anticipate the content of a motion to recommit, he will not rule in advance as to whether a particular instruction would be germane. 91–1, Dec. 10, 1969, p 38130.

The Speaker does not rule on such questions of germaneness as may be the province of the Chairman of the Committee of the Whole. 91–1, Dec. 10, 1969, p 38130.

Impeachment

Research References
1 Hinds §§ 63–79
6 Cannon §§ 193–202
3 Deschler Ch 14
Manual §§ 173–176; 603–620
U.S. Const. art. I §§ 2, 3; art. II § 4

A. Generally

§ 1. In General; House and Senate Functions

Impeachment is a constitutional remedy addressed to serious offenses against the system of government. It is the first step in a remedial process—that of removal from public office and possible disqualification from holding further office. The purpose of impeachment is not personal punishment; rather, its function is primarily to maintain constitutional government. Deschler Ch 14 App. pp 726–728.

Impeachment proceedings have been initiated more than 60 times since the adoption of the Constitution. 3 Hinds §§ 2294 *et seq.*; 6 Cannon §§ 498 *et seq.*; Deschler Ch 14 § 1. Fifteen of these cases resulted in impeachment by the House—President Andrew Johnson in 1868, Secretary of War Wil-

liam W. Belknap in 1876, Senator William Blount in 1799 and 12 federal judges. Only seven impeachments have led to Senate convictions—all of federal judges.

An impeachment is instituted by a written accusation, called the ''Articles of Impeachment,'' which states the offense charged; the articles serve the same purpose as an indictment in an ordinary criminal proceeding. See *Manual* § 609.

The impeachment power is delineated by the U.S. Constitution. The House is given the ''sole Power of Impeachment'' (art. I § 2); the Senate is given ''the sole Power to try all Impeachments'' (art. I § 3). Impeachments may be brought against the ''President, Vice President, and all civil Officers of the United States'' (art. II § 4). Conviction of ''Treason, Bribery, or other high Crimes and Misdemeanors'' (art. II § 4) is followed by ''removal from Office'' and may include ''disqualification to hold'' further public office (art. I § 3).

The term ''impeach'' is used in different ways at various stages of the proceedings. A Member rises on the floor to ''impeach'' an officer in presenting a resolution or memorial. 3 Hinds § 2469. The House votes to ''impeach'' in the constitutional sense when it adopts an impeachment resolution and accompanying articles. § 8, infra. The Senate then conducts a trial on these articles and either convicts by two-thirds vote or acquits the ''impeached'' accused federal official. § 9, infra.

§ 2. Who May Be Impeached

The ''President, Vice President, and all civil Officers of the United States'' are subject to removal under the impeachment clause of the Constitution. U.S. Const. art. II § 4. A private citizen who has held no public office may not be impeached. 3 Hinds §§ 2007, 2315.

It has been said that the term ''civil Officers,'' as used in the Constitution, is broad enough to include all officers of the United States who hold their appointment from the federal government, whether their duties be executive, administrative, or judicial, or whether their position be high or low. Impeachment, Selected Materials, Committee on the Judiciary, H. Doc. No. 93–7, p 691, Oct. 1973. On the other hand, military officers are not subject to impeachment, since they are subject to disciplinary measures according to military codes. 3 Willoughby, The Constitution (1929) § 929; 9 Hughes, Federal Practice (1931) § 7228.

A Member of Congress is not a ''civil Officer'' within the meaning of the impeachment provisions of the Constitution. 3 Hinds §§ 2310, 2316. The contention that a Senator was not a civil officer within the meaning of the

impeachment provisions of the Constitution was sustained by the Senate in 1799. The Senate dismissed impeachment charges brought to its bar by the House, finding that an impeachment of a Senator was beyond its jurisdiction. 3 Hinds § 2318.

Federal judges are subject to removal under the impeachment provisions of the Constitution. Of the 15 impeachments reaching the Senate, 12 have been directed at federal judges, and in seven of these cases the Senate voted to convict: Pickering in 1803 (3 Hinds §§ 2319–2341), Humphreys in 1863 (3 Hinds §§ 2385–2397), Archbald in 1912 (6 Cannon §§ 498–512), Ritter in 1936 (S. Doc. No. 200, 74–2, 1936), Claiborne in 1986, and Nixon and Hastings in 1988 and 1989 (see *Manual* § 176).

Impeachment proceedings were initiated against a Member of the President's Cabinet in 1876, when impeachment charges were filed against William Belknap, who had been Secretary of War. The House and Senate debated the power of impeachment at length and determined that the former secretary was amenable to impeachment and trial. 3 Hinds §§ 2007, 2467. In 1978, the House voted to table a privileged resolution impeaching Andrew Young, the United States Ambassador to the United Nations. 95–2, July 13, 1978, p 20606.

A Commissioner of the District of Columbia has been held not to be a civil officer subject to impeachment under the Constitution. 6 Cannon § 548.

Effect of Resignation

The House and Senate have the power to impeach and try an accused who has resigned. Deschler Ch 14 § 2. It has been conceded (in the Blount impeachment proceeding) that a person who has been impeached cannot escape punishment simply by submitting his resignation. 3 Hinds §§ 2317, 2318. As a practical matter, however, the resignation of an official about to be impeached generally puts an end to impeachment proceedings because the primary objective—removal from office—has been accomplished. This was the case in the impeachment proceedings begun against President Nixon in 1974 and federal judge George English in 1926. Deschler Ch 14 §§ 2.1, 2.2. President Nixon having resigned following the decision of the Committee on the Judiciary to report to the House recommending his impeachment, further proceedings were discontinued. H. Rept. No. 93–1305, 93–2, Aug. 20, 1974, p 29361.

§ 3. Grounds for Impeachment

Generally

The Constitution defines the grounds for impeachment and conviction as ''Treason, Bribery, or other high Crimes and Misdemeanors.'' U.S. Const. art. II § 4. When the House determines that grounds for impeachment exist, and they are adopted by the House, they are presented to the Senate in articles of impeachment. Any one of the articles may provide a sufficient basis or ground for impeachment. Deschler Ch 14 § 3.

The interpretation which has been placed on the words ''high Crimes and Misdemeanors'' is a broad one. The framers of the Constitution adopted the phrase from the English practice. At the time of the Constitutional Convention, the phrase ''high crimes and misdemeanors'' had been in use for over 400 years in impeachment proceedings in Parliament. Some of these impeachments charged high treason; others charged high crimes and misdemeanors. The latter included both statutory offenses and nonstatutory offenses. Many of the charges involved abuse of official power or trust. Deschler Ch 14 App. pp 706–708.

An offense must be serious or substantial in nature to provide grounds for impeachment. This requirement flows from the language of the clause itself—''*high* Crimes and Misdemeanors.'' While there is some authority to the contrary, it is generally accepted that the adjective ''high'' modifies ''Misdemeanors'' as well as ''Crimes.'' Impeachment—Selected Materials, Committee on the Judiciary, 93–1, Oct. 1973, p 682. As to what constitutes a serious, impeachable offense, one commentator has said:

> To determine whether or not an act or a course of conduct is sufficient in law to support an impeachment, resort must be had to the eternal principles of right, applied to public propriety and civil morality. The offense must be prejudicial to the public interest and it must flow from a willful intent, or a reckless disregard of duty. . . . It may constitute an intentional violation of positive law, or it may be an official dereliction of commission or omission, a serious breach of moral obligation, or other gross impropriety of personal conduct which, in its natural consequences, tends to bring an office into contempt and disrepute. Brown, The Impeachment of the Federal Judiciary, 26 Harv. L. Rev. 684, 703, 704.

The time when the offenses were committed is a factor to be taken into consideration. In 1973, the House declined to take any action on a request by Vice President Agnew for an investigation into allegations of impeachable offenses, where the offenses were not committed during his term of office as Vice President and where the offenses were pending before the courts. 93–1, Sept. 25, 1973, p 31368.

Exactly 100 years earlier, by coincidence in a case that also involved the Vice President, the Judiciary Committee found that Schuyler Colfax could not be impeached for an alleged offense committed before his term of office as Speaker of the House. 3 Hinds § 2510.

Presidential Impeachments

The grounds for invoking the impeachment power against the President were illustrated in 1974 when the House initiated an inquiry into President Nixon's conduct as a result of charges arising out of a 1972 break-in at the Democratic National Headquarters in the Watergate Office Building in Washington, D.C. The House Judiciary Committee adopted three articles of impeachment against Nixon late in July 1974. The articles charged him with abuse of his Presidential powers, obstruction of justice, and contempt of Congress. Deschler Ch 14 § 3.7. Before the full House voted on these articles, Nixon resigned, after having been assured that his impeachment was a virtual certainty. His resignation terminated further action on the issue, although the articles were submitted to and accepted by the House. 93–2, Aug. 20, 1974, pp 29219–29362.

This was but the second time in the history of the United States that the House resolved to investigate the possibility of impeaching a President. Some 107 years earlier the House had investigated whether President Andrew Johnson should be impeached. Johnson was impeached by the House on the ground that he had violated the Tenure of Office Act by dismissing a Cabinet chief. The theory of the proponents of impeachment was succinctly put by one of the managers in the Senate trial:

> An impeachable high crime or misdemeanor is one in its nature or consequences subversive of some fundamental or essential principle of government or highly prejudicial to the public interest, and this may consist of a violation of the Constitution, of law, of an official oath, or of duty, by an act committed or omitted, or, without violating a positive law, by the abuse of discretionary powers from improper motives or for an improper purpose. The Constitution of the United States of America—Analysis and Interpretation, p 607, U.S. Government Printing Office, 1982.

Judicial Impeachments

Since federal judges hold office ''during good Behaviour'' (U.S. Const. art. III § 1), it has been suggested that misbehavior properly defines the bounds of ''high Crimes and Misdemeanors,'' or even that lack of good behavior constitutes an independent standard for impeachment. 6 Cannon § 464. The more modern view, however, is that the ''good Behaviour'' clause is more aptly descriptive of judicial tenure; that is, that it does not constitute a standard for impeachability, but merely means that federal

judges hold office for life unless removed under some other provision of the Constitution. Under this view, the power of removal, together with the appropriate standard, are contained solely in the impeachment clause. Impeachment—Selected Materials, Committee on the Judiciary, 93–1, Oct. 1973, p 666.

The grounds for impeachment of federal judges were scrutinized in 1970, in the inquiry into the conduct of Associate Justice Douglas of the Supreme Court. The report concluded that a federal judge could be impeached for judicial conduct which is either criminal or a serious abuse of public duty, or for nonjudicial conduct which is criminal. Deschler Ch 14 § 3.13 (proceedings discontinued for lack of evidence).

§ 4. — Impeachable Misconduct

Impeachments have commonly involved charges of misconduct incompatible with the official position of the office holder. This conduct falls into three broad categories: (1) abusing or exceeding the lawful powers of the office; (2) behaving in a manner grossly incompatible with the office; and (3) using the power of the office for an improper purpose or for personal gain. See Deschler Ch 14 App. p 719.

Abusing or Exceeding the Powers of the Office

The impeachment by the House of Senator William Blount in 1797 was based on allegations that he attempted to incite an Indian attack in order to capture certain territory for the British. He was charged with engaging in a conspiracy to compromise U.S. neutrality, and with attempting to oust the President's lawful appointee as principle agent for Indian affairs. 3 Hinds §§ 2294–2318. Although the Senate found that it had no jurisdiction over the trial of an impeached Senator, it expelled him for having been guilty of a ''high misdemeanor, entirely inconsistent with his public trust and duty as a Senator.'' Deschler Ch 14 App. p 720.

The impeachment of President Andrew Johnson in 1868 was likewise based on allegations that he had exceeded the power of his office. Johnson was charged with violation of the Tenure of Office Act, which purported to limit the President's authority to remove members of his own Cabinet. Johnson, believing the act unconstitutional, removed Secretary of War Stanton and was impeached by the House three days later. Johnson was acquitted in the Senate by a single vote. 3 Hinds §§ 2399.

A serious abuse of the powers of the office was a charge included among the recommended articles impeaching President Nixon in 1974. The Judiciary Committee found that his conduct ''constituted a repeated and continuing abuse of the powers of the Presidency in disregard of the fun-

damental principle of the rule of law in our system of government.'' Deschler Ch 14 § 3.7.

Behavior Grossly Incompatible With the Office

Judge John Pickering was impeached by the House in 1803 for errors in a trial in violation of his trust and duty as a judge, and for appearing on the bench during the trial in a state of intoxication and using profane language. Pickering was convicted in the Senate and removed from office. 3 Hinds §§ 2319–2341.

Associate Supreme Court Justice Samuel Chase was impeached by the House in 1804. The House charged Chase with permitting his partisan views to influence his conduct in certain trials. His conduct was alleged to be a serious breach of his duty to judge impartially and to reflect on his competence to continue to exercise the power of the office. Chase was acquitted in the Senate. 3 Hinds §§ 2342–2363.

Judge West Humphreys was impeached by the House and convicted in the Senate in 1862 on charges that he joined the Confederacy without resigning his federal judgeship. Judicial prejudice against Union supporters was also alleged. 3 Hinds §§ 2385–2397.

Judge George W. English was impeached by the House in 1926 for showing judicial favoritism and for failure to give impartial consideration to cases before him. It was alleged that his favortism had created distrust of his official actions and destroyed public confidence in his court. 6 Cannon §§ 544–547. Judge English resigned prior to commencement of trial by the Senate and the proceedings were discontinued at that point.

Using the Office for an Improper Purpose or Personal Gain

In 1826, Judge James Peck was impeached by the House for taking action against a lawyer who had publicly criticized one of his decisions, imprisoning him, and ordering his disbarment. The House charged that such conduct was unjust, arbitrary, and beyond the scope of his judicial duties. Peck was acquitted in the Senate. 3 Hinds §§ 2364–2366. Vindictive use of power also constituted an element of the charges in the articles of impeachment voted against Judge Charles Swayne in 1903. It was alleged that he maliciously and unlawfully imprisoned two lawyers and a litigant for contempt. 3 Hinds §§ 2469–2485.

Several impeachments have alleged the use of office for personal gain or the appearance of financial impropriety while in office. Secretary of War William Belknap was impeached by the House in 1876 for receiving substantial payments in return for his making of an appointment. He was acquitted in the Senate. 3 Hinds §§ 2444–2468.

The use of the office for direct or indirect personal monetary gain was also involved in the impeachments of Judges Charles Swayne (1903), Robert Archbald (1912), George English (1926), Harold Louderback (1932), and Halsted Ritter (1936). Judge Swayne was charged with falsifying expense accounts. Judge Archbald was charged with using his office to secure business favors from litigants and potential litigants before his court. Judges English, Louderback, and Ritter were charged with misusing their power to appoint and set the fees of bankruptcy receivers for personal profit. See 3 Hinds §§ 2469–2485 (Swayne); 6 Cannon §§ 498–512 (Archbald); §§ 544–547 (English); §§ 513–524 (Louderback); 74–2, Jan. 14, 1936, p 5602 (Ritter).

In 1986, the House agreed to a resolution impeaching federal district judge Harry Claiborne, who had been convicted of falsifying federal income tax returns. His final appeal was denied by the Supreme Court, and he began serving his prison sentence. Because he declined to resign, however, Judge Claiborne was still receiving his judicial salary and, absent impeachment, would resume the bench on his release from prison. Consequently, a resolution of impeachment was introduced on June 3, and on July 16, the Committee on the Judiciary reported to the House four articles of impeachment against Judge Claiborne. On July 22, the resolution was called up as a question of privilege and agreed to by a recorded vote of 406 yeas, 0 nays. After trial in the Senate, Judge Claiborne was convicted on three of the four articles of impeachment and removed from office on Oct. 9, 1986. *Manual* § 176.

In 1988, the House agreed to a resolution reported from the Committee on the Judiciary impeaching federal district judge Alcee L. Hastings. The resolution specified 17 articles of impeachment, some of them addressing allegations on which the judge had been acquitted in a federal criminal trial (H. Res. 499, 100–2, Aug. 3, 1988, pp 20206 *et seq.*). The judge was convicted in a trial before the Senate in the One Hundred First Congress. 101–1, Oct. 20, 1989, p ____.

In 1989, the House voted 417 to 0 to impeach U.S. District Court Judge Walter L. Nixon, Jr. after he had been convicted on two counts of perjury before a grand jury about his relationship to a man whose son was being prosecuted for drug-smuggling. The impeachment resolution charged that Nixon had given false information about whether he had discussed the case with the local district attorney and attempted to influence its outcome. 101–1, May 10, 1989, p 8814.

Noncriminal Misconduct

In the history of impeachments under the U.S. Constitution, the most closely debated issue has been whether impeachment is limited to offenses indictable under the criminal law—or at least to offenses which constitute crimes—or whether the word ''Misdemeanors'' in the impeachment clause extends to noncriminal misconduct as well. While the precedents are not entirely uniform, the majority clearly favors the broader definition. As stated in the Ritter impeachment, the modern view is that the provision for impeachment in the Constitution applies not only to high crimes and misdemeanors as those words were understood at common law, but also to acts which, though not defined as criminal, adversely affect the public interest. H. Rept. No. 93–653, pp 9, 10 (1926).

The historical evidence establishes that the phrase ''high crimes and misdemeanors''—which over a period of centuries evolved into the English standard of impeachable conduct—had a special and distinctive meaning, and referred to a category of offenses that subverted the system of government. Deschler Ch 14 App. p 724. The American experience with impeachment likewise reflects the view that impeachable conduct need not be criminal. Of the 15 impeachments voted by the House since 1789, at least 10 involved one or more allegations that did not charge a violation of criminal law. Deschler Ch 14 App. p 725. The impeachment of Judge Pickering in 1803 was the first such proceeding to result in conviction and was based, at least in part, on noncriminal misconduct. The first three articles involved a series of flagrant errors on the part of the judge in his conduct of a case. 3 Hinds §§ 2319 *et seq.* Similarly, in 1974, in recommending articles impeaching President Nixon, the House Committee on the Judiciary concluded that the President could be impeached not only for violations of federal criminal statutes, but also for abuse of the power of his office and for refusal to comply with proper subpenas of the committee. Deschler Ch 14 § 3.7.

In drawing up articles of impeachment, the House has placed little emphasis on criminal conduct. Less than one-third of all the articles the House has adopted have explicitly charged the violation of a criminal statute or used the word ''criminal'' or ''crime'' to describe the conduct alleged. Much more common in the articles are allegations that the officer has violated his duties or his oath or seriously undermined public confidence in his ability to perform his official functions. Deschler Ch 14 App. p 723.

§ 5. Effect of Adjournment

An impeachment may proceed only when Congress is in session. 3 Hinds §§ 2006, 2462. But an impeachment proceeding does not die with adjournment. An impeachment proceeding begun in the House in one Congress may be resumed by the House in the next Congress. 3 Hinds § 2321. And an official impeached by the House in one Congress may be tried by the Senate in the next. 3 Hinds §§ 2319, 2320.

Managers on the part of the House who were appointed in the prior Congress to conduct the trial in the Senate may be reappointed in the following Congress by resolution. Deschler Ch 14 § 4.2. Thus, the resolution and articles of impeachment against Judge Alcee Hastings were presented in the Senate during the second session of the 100th Congress (100–2, Aug. 3, 1988, p 20223) but were still pending trial by the Senate in the 101st Congress, when the House reappointed managers (101–1, Jan. 3, 1989, p 84).

B. Procedure in the House

§ 6. In General; Initiation and Referral of Charges

Generally

Under the modern practice, an impeachment is normally instituted by the House by the adoption of a resolution calling for a committee investigation of charges against the officer in question. This committee may, after investigation, recommend the dismissal of charges or it may recommend impeachment. Impeachment—Selected Materials, Committee on the Judiciary, H. Doc. No. 93–7, Oct. 1973, p 699. A resolution recommending impeachment is reported to the House simultaneously with the articles of impeachment setting forth the grounds for the proposed action. § 8, infra. Following the adoption of a resolution to impeach, the House appoints managers to conduct the impeachment trial in the Senate. The Senate is then informed of these facts by resolution. Deschler Ch 14 § 9. When this resolution reaches the Senate, the Senate advises the House as to when the Senate will receive the managers appointed by the House. The managers then present themselves and the impeachment articles to the Senate, the House reserving the right to file additional articles later. Deschler Ch 14 §§ 10, 11.

Initiation of Charges

In most cases, impeachment proceedings in the House have been initiated either by introducing resolutions of impeachment by placing them in

the hopper, or by offering charges in a resolution on the floor of the House under a question of constitutional privilege. Deschler Ch 14 § 5.

Other methods of setting an impeachment in motion in the House include:

- Charges initiatd by a memorial from one or more citizens and referred to committee. 3 Hinds §§ 2364, 2491, 2494.
- A message from the President. 3 Hinds §§ 2294, 2319; 6 Cannon § 498.
- Charges transmitted from the legislature of a state. 3 Hinds § 2469.
- Charges arising from a grand jury investigation. 3 Hinds § 2488.

In the 93d Congress, Vice President Agnew used a letter to the Speaker to attempt to initiate an investigation by the House of charges against him of possible impeachable offenses; the House took no action on the request. 93–1, Sept. 25, 1973, p 31368.

Referral to Committee

Resolutions introduced through the hopper which directly call for an impeachment are referred to the Committee on the Judiciary, whereas resolutions merely calling for a committee investigation with a view toward impeachment are referred to the Committee on Rules. See 93–1, Oct. 23, 1973, p 34873. Thus, a resolution authorizing an investigation in the 89th Congress into the conduct of three federal judges was referred to the Committee on Rules. 89–2, Feb. 22, 1966, p 3665. But where a Member announces on the floor that he is introducing a resolution of impeachment, the resolution is referred to the Committee on the Judiciary if it is a direct proposition to impeach. 91–2, Apr. 15, 1970, pp 11912, 11920, 11941 (Douglas).

All impeachments to reach the Senate since 1900 have been based on Judiciary Committee resolutions. Prior to that committee's creation in 1813, impeachments were referred to a special committee for investigation. 6 Cannon § 657; *Manual* §§ 603 *et seq.*

§ 7. Committee Investigations

Committee impeachment investigations are governed by those portions of Rule XI relating to committee investigatory and hearing procedures, and by any rules and special procedures adopted by the committee for the inquiry. See Deschler Ch 14 §§ 6.3 *et seq.* The House may by resolution waive a requirement of these rules in a particular case. In one recent instance, the House agreed to a resolution authorizing the counsel to the Committee on the Judiciary to take depositions of witnesses in an impeachment investigation and waiving the provisions of Rule XI which requires at least

two committee members to be present during the taking of such testimony. 93–2, Feb. 6, 1974, pp 2349 *et seq.*

Under the earlier practice, the committee sometimes made its inquiry *ex parte* (3 Hinds §§ 2319, 2343, 2385), but the modern trend is to permit the accused to testify, present witnesses, cross-examine witnesses (3 Hinds §§ 2445, 2471, 2518), and be represented by counsel (3 Hinds §§ 2470, 2501; 93–2, Aug. 20, 1974, p 29219). Constitutionality, see § 9, infra.

Confidentiality of Material; Access

The Committee on the Judiciary may adopt procedures which insure the confidentiality of impeachment inquiry materials and which limit access to such materials. Deschler Ch 14 § 15.3. Where a federal court subpenas certain evidence gathered by the committee in an impeachment inquiry, the House may adopt a resolution granting such limited access to the evidence as will not violate the privileges of the House or its sole power of impeachment under the Constitution. 93–2, Aug. 22, 1974, p 30047.

Subcommittee Investigations

An investigatory subcommittee charged with an impeachment inquiry is limited to the powers expressly authorized by the full committee. See Deschler Ch 14 § 6.11. After completing its investigation, the subcommittee ordinarily submits recommendations to the full committee as to whether impeachment is warranted. See, for example, Final Report of the Special Subcommittee on H. Res. 920 of the Committee on the Judiciary, 91–2, Sept. 17, 1970 (Douglas).

Forms

For forms of resolutions authorizing an investigation of the sufficiency of grounds for impeachment and conferring subpena power and authority to take testimony, see Deschler Ch 14 § 6.

§ 8. Consideration in the House; Voting

Generally

The target of an impeachment proceeding is impeached by the House if it adopts a resolution with articles of impeachment. Only a majority vote is necessary (whereas a two-thirds vote is required in the Senate for conviction). Impeachments—Selected Materials, Committee on the Judiciary, H. Doc. No. 93–7, Oct. 1973, p 700. In this regard, as is the usual practice, the committee's recommendations as reported in the resolution are in no way binding on the House. In 1933, the House voted to impeach Judge Har-

old Louderback even though the House Judiciary Committee found insufficient grounds to recommend impeachment. 6 Cannon § 514.

Impeachment Propositions as Privileged

A resolution impeaching an officer is highly privileged under the Constitution, and therefore supersedes other pending business (3 Hinds §§ 2045–2048; 6 Cannon § 468), including an election contest (3 Hinds § 2581). Such a resolution may be immediately considered in the House as a question of high privilege [and is therefore not subject to the three-day layover requirement of Rule XI]. 95–2, July 13, 1978, p 20606 (Andrew Young). It does not lose its privilege from the fact that a similar proposition has been made at a previous time during the same session. 3 Hinds § 2408. However, a resolution simply proposing an investigation is not privileged, even though impeachment may be a possible consequence. 3 Hinds §§ 2050, 2546; 6 Cannon § 463.

A committee to which resolutions of impeachment have been referred may report and call up as privileged resolutions incidental to the consideration of the impeachment question. If, however, such a resolution is offered on the floor by a Member on his own initiative and not reported from the committee to which the impeachment has been referred, it is not privileged for immediate consideration, since not directly calling for impeachment. Deschler Ch 14 § 5.8.

Propositions incidental to an ongoing impeachment proceeding taken up as privileged (3 Hinds § 2400), have included:

- Reports relating to the investigation (3 Hinds § 2402; Deschler Ch 14 § 8.2).
- Resolutions providing for the selection of managers (6 Cannon § 517).
- Propositions to abate an impeachment proceeding (6 Cannon § 514).
- Proposals to confer subpena authority or to provide funding for the investigation (6 Cannon § 549; 93–2, Feb. 6, 1974, p 2349).

Resolutions incidental to the consideration of the impeachment question may be called up as privileged by the committee considering the matter. 93–2, Feb. 6, 1974, p 2349.

Although charges or resolutions of impeachment are privileged, they cannot be presented while another Member has the floor unless he yields for that purpose. 91–2, Apr. 15, 1970, p 11920.

Debate; Motions

Propositions of impeachment are considered under the general rules of the House applicable to other simple House resolutions, unless the House otherwise provides by special order. Deschler Ch 14 § 8. Since 1912, the

House has considered the resolution together with the articles of impeachment. Deschler Ch 14 § 8.2. The House may consider the resolution and articles under a unanimous-consent agreement fixing and controlling the time for debate. Deschler Ch 14 §§ 8.1, 8.4. The motion for the previous question and the motion to recommit are applicable, and a separate vote may be demanded on substantive propositions contained in the resolution. Deschler Ch 14 §§ 8.8–8.10. The resolution is also subject to a motion to lay on the table before debate thereon. 95–2, July 13, 1978, p 20606.

A wide range of debate is permitted on impeachment proposals, and a Member may refer to the political, social, and even the family background of the accused. Deschler Ch 14 § 8.5.

C. Procedure in the Senate

§ 9. In General

The sole power to try impeachments is vested in the Senate under the Constitution. U.S. Const. art. I § 3 clause 6. On the day of the trial, the Senate resolves itself into a court for the trial of the impeachment. Deschler Ch 14 § 11.5. The President of the Senate presides over the trial, except in the case of the impeachment of the President of the United States or the Vice President, in which case the Chief Justice presides. Deschler Ch 14 § 11. Upon organization of the court, the managers appear and the trial of the case proceeds. In the later practice, the resolution and articles of impeachment have been considered together and exhibited simultaneously in the Senate by the House managers. 6 Cannon §§ 501, 515; 74–2, Mar. 10, 1936, pp 3485–88. Objections to the articles of impeachment, on the ground that they duplicate and accumulate separate offenses, have been overruled. 74–2, Apr. 3, 1936, p 4898; 74–2, Apr. 17, 1936, p 5606.

The presentation of the evidence follows a traditional sequence. The evidence against the accused is first presented, then evidence in defense and concluding evidence by the managers. The accused is permitted to testify in answer to the charges contained in the articles. 6 Cannon §§ 511, 524; Deschler Ch 14 § 12.11. Counsel are permitted to appear, to be heard, to argue on preliminary and interlocutory questions, to deliver opening and final arguments, to submit motions, and to present evidence and examine and cross-examine witnesses. Deschler Ch 14 § 12.

The use of a Senate committee in judicial impeachment proceedings does not violate any constitutional rights or offend fundamental notions of justice. *Hastings* v *U.S. Senate, Impeachment Trial Committee*, D.D.C. 1989, 716 F Supp 38. In one recent case, the court denied the claim of a former

federal judge that conviction voted by the Senate on two articles of impeachment adopted by the House was void because the judge was not afforded trial before the ''full'' Senate, rather than before a Senate committee. The court ruled that the Senate's denial of the former judge's motion for hearing before the full Senate, while according him the opportunity to present and cross-examine witnesses before the 12-member committee, and an opportunity to argue both personally and by counsel before the full Senate, did not make the controversy justiciable and the claim meritorious. *Nixon* v *US*, D.D.C. 1990, 744 F Supp 9, affirmed 938 F2d 239, 290 U.S. App. D.C. 420, affirmed 113 S.Ct. 732, 122 L.Ed.2d 1.

At the conclusion of the evidence, there is argument, followed by deliberation by the Senate in executive session and a vote in open session. Deschler Ch 14 § 13. Prior to the vote, the proceedings may be dismissed in the Senate on the advice of the House managers. Deschler Ch 14 § 2.2.

§ 10. Voting and Judgment

Under the Constitution, a two-thirds vote is required to convict the accused on an article of impeachment (U.S. Const. art. I § 3 clause 6), the articles being voted on separately under the Senate rules (Deschler Ch 14 § 13). The yeas and nays are taken on each article separately. 3 Hinds §§ 2098, 2339. In some instances, the Senate has adopted an order to provide a method of voting and putting the question separately and successively on each article. 6 Cannon § 524; 74–2, Apr. 16, 1936, p 5558.

The Constitution provides for removal from office on conviction and also allows the further judgment of disqualification from holding further office. U.S. Const. art. I § 3 clause 7. No vote is required on removal following conviction, since removal follows automatically from conviction under this constitutional provision. Deschler Ch 14 § 13.9. But the further judgment of disqualification from holding future office requires a majority vote. Deschler Ch 14 § 13.10. The question on removal and disqualification is divisible. 3 Hinds § 2397; 6 Cannon § 512.

The impeachment and removal from office of a United States District Judge did not necessarily disqualify him from holding office as a Member of the House, absent any specific action taken by the Senate to disqualify him from future federal office. *Waggoner* v *Hastings,* S.D.Fla. 1993, 816 F. Sup. 716.

Introduction and Reference of Bills

Research References
4 Hinds §§ 3364–3366
7 Cannon §§ 1027–1033
4 Deschler Ch 16
Manual §§ 700, 849–860

§ 1. Introduction of Measures in the House; Sponsorship

Bills and Resolutions

The system for introducing measures in the House is a relatively free and open one. Bills and resolutions are introduced simply by depositing them in the hopper at the Clerk's desk anytime that the House is in session. Deschler Ch 16 § 1. A Member may introduce a bill during an interim *pro forma* meeting at a time when no legislative business is being conducted. 96–2, Jan. 7, 1980, p 25; 102–2, Jan. 28, 1992, p ____.

A bill or resolution may be introduced by any Member who has taken the oath (89–1, Jan. 4, 1965, p 25) and he need not seek recognition for that purpose. The Member is generally present on the floor to introduce the measure. A Member may introduce a bill even though he is personally opposed to its passage. Deschler Ch 16 § 1.6. The rules do not limit the number of bills a Member may introduce.

Once introduced the bill becomes the property of the House, and the House may consider it notwithstanding the death, resignation, or replacement of its sponsor. 86–2, May 3, 1960, p 9246; 88–2, Jan. 29, 1964, p 15274.

Bills Introduced ''By Request''

Only a Member or Delegate may introduce a bill. The House does not permit the names of citizens requesting the introduction of a bill to be print-

ed in the Record, but the rules do permit the words ''by request'' to be entered on the Journal and printed in the Record. *Manual* § 860. These words appear following the name of the primary Member introducing the bill. 87–1, Apr. 13, 1961, p 5900.

Petitions and Memorials

Petitions and memorials addressed to the House are delivered to the Clerk (*Manual* § 849a), and may be presented by the Speaker as well as by any Member (4 Hinds § 3312). A Member may present a petition from the citizens of a state other than his own. 4 Hinds §§ 3315, 3316.

Sponsorship; Endorsements and Signatures

By House rule, all bills, resolutions, and memorials must be endorsed with the name(s) of the Member or Members introducing them. *Manual* § 854. By directive of the Speaker, all bills must bear the original signature of the chief sponsor or first-named Member. 92–2, Feb. 3, 1972, p 2521; 93–1, Jan. 3, 1973, p 30. A bill falsely introduced in a Member's name in his absence involves a question of privilege, and the House may agree to an order providing for its cancellation. 4 Hinds § 3388.

Cosponsorship

Unlimited cosponsorship of public bills is permitted until such time as all committees authorized to report the bill have done so. *Manual* § 854. Before the bill is reported, a Member may remove his name as a cosponsor by unanimous consent. 96–1, Feb. 26, 1979, p 326. Alternatively, a sponsor may announce his withdrawal of support for a bill (92–1, Mar. 29, 1971, p 8268), and a statement indicating that an error was made in the listing of a sponsor's name may be made on the floor and will appear in the Record. Deschler Ch 16 § 2.5. At its organization for the 104th Congress, the House resolved that each of the first 20 bills and each of the first two joint resolutions introduced in that Congress could have more than one Member reflected as a first sponsor. *Manual* § 855.

§ 2. Reference

Generally

After a bill has been introduced it is referred to committee in accordance with the rule fixing the jurisdiction of committees over particular subjects (Rule X clause 1), and in accordance with the referral procedures that were adopted in 1975 and in 1995 (Rule X clause 5). See also Deschler Ch 16 § 3.

Absent specific authority, a committee may not report a measure which it did not originate and which has not been properly referred to it by the Speaker or by the House. 4 Hinds §§ 4355–4360; 7 Cannon §§ 1029, 2101. Under the modern practice reports filed from the floor as privileged pursuant to Rule XI clause 4(a) have been permitted on bills and resolutions originating in certain committees. *Manual* § 412. The committees so authorized are Appropriations, Budget, House Oversight, Rules, and Standards of Official Conduct. *Manual* § 726.

Public bills are referred by the Speaker (*Manual* § 854) pursuant to the jurisdictional requirements of Rule X clause 1 (*Manual* § 669), but when the House itself refers a bill it may send it to any committee without regard to the rules of jurisdiction. 4 Hinds § 4375; 7 Cannon § 2131. Jurisdiction in such a case is deemed conferred by the action of the House. 4 Hinds §§ 4362–4364; 7 Cannon § 2105.

Erroneously Referred Bills

A House rule (*Manual* § 854) provides for procedures to be followed in case of an error in the reference of a public bill. The House rerefers such bills without debate (Deschler Ch 16 § 3.13) usually pursuant to a unanimous-consent request (Deschler Ch 16 §§ 3.14, 3.15) or infrequently by agreement to a rereferral motion authorized by the committee claiming or relinquishing jurisdiction over the matter. *Manual* § 854; Deschler Ch 16 §§ 3.10–3.13. The motion to rerefer in such cases:

- Must apply to a bill erroneously referred (7 Cannon § 2125).
- Must be made immediately following the reading of the Journal (Rule XXII clause 4. See also 7 Cannon §§ 1809, 2119, 2120).
- Must apply to a single bill and not to a class of bills (7 Cannon § 2125).
- May be amended (7 Cannon § 2127).
- May not be divided (7 Cannon § 2125).
- May not be debated (7 Cannon §§ 2126–2128).

Bills Reported From Committee; Referrals to Calendars

Bills reported from committees are ordinarily referred to the proper calendar under the direction of the Speaker. *Manual* § 743. Once a bill has been reported by committee, points of order against its reference and motions for its rereferral are not entertained. 7 Cannon § 2110; Deschler Ch 16 § 3.6. However, under the modern referral procedures authorized by the rules, a bill reported from committee may be sequentially referred by the Speaker to other committees. § 4, infra. Moreover, once consideration of the reported measure has begun in the House, a motion to refer or recommit is in order in differing situations under the House rules. *Manual* §§ 782, 787. Generally, see REFER AND RECOMMIT.

§ 3. — Private Bills

A private bill delivered to the Clerk is referred to committee pursuant to the endorsement specified thereon by the Member introducing it. *Manual* § 849a. The introduction from the floor of a private bill is rarely permitted, and then only by unanimous consent. 91–1, Apr. 16, 1969, p 9258. As to the distinction between public bills and private bills, see BILLS.

Certain types of private bills, such as bills for the payment of claims which may be instituted under the Federal Tort Claims Act, may not be received or considered in the House. *Manual* § 852. And bills for the payment of a private claim against the government may be referred only to certain committees (Rule XXI clause 4), although this requirement has been waived by unanimous consent so as to permit reference to a different committee. 95–2, May 4, 1978, p 12615.

Under the rules (*Manual* § 853), errors in private bills may be corrected without action by the House at the suggestion of the committee having possession of the bill. 4 Hinds § 4379. Since an erroneous reference of a private bill does not confer jurisdiction on the committee to report it (Rule XXII clause 3), a point of order will lie against the bill when it comes up for consideration in the House or in the Committee of the Whole. 4 Hinds §§ 4382–4389.

§ 4. Multiple Referrals; Sequential or Split Referrals

Prior to the 94th Congress, a bill could not be divided among two or more committees, even though it contained matters properly within the jurisdiction of several committees. 4 Hinds 4372. But in 1975, the House adopted a rule stating that every referral must be made in such manner as to assure ''to the maximum extent feasible'' that each committee having jurisdiction over the subject matter of a provision will have responsibility for considering it and reporting thereon to the House. Rule X clause 5(b).

This rule was amended in 1995 (H. Res. 6, 104th Cong.) to require the Speaker to designate a committee of primary jurisdiction upon the initial referral of a measure to a committee. The Speaker then has the discretion to:

- Refer the same measure to other committees (sequential referral), subject to time limits imposed after the primary committee has reported.
- Refer designated portions of the same measure to other committees (split referral).
- Refer a measure to a special ad hoc committee established by the House consisting of members of committees with shared jurisdiction over the measure.

The new rule eliminates so-called joint referrals and substitutes the requirement that the Speaker designate the committee of primary jurisdiction. (Referrals are always for consideration only of such provisions as fall within a committee's jurisdiction.) H. Res. 6, § 205, Jan. 4, 1995.

§ 5. Bills Reported With Amendments

A bill reported from committee with an amendment may be sequentially referred to another committee where the amendment falls within the jurisdiction of the second committee. 95–1, Oct. 13, 1977, p 33716; 97–1, May 20, 1981, p 10361. In determining whether the matter falls within the jurisdiction of the second committee, the Speaker may take into consideration the text of the amendment as well as the text of the original bill (97–1, Jan. 5, 1981, p 115); or he may base his referral solely on the text of a reported substitute amendment in lieu of original text (100–1, Jan. 6, 1987, p 21). The second committee may then report an amendment to the amendment adopted by the first committee, if within the jurisdiction of the second committee.

The Speaker has exercised the authority to base referrals on committee amendments to reported bills by sequentially referring:

- A reported bill to another committee solely for consideration of provisions of the first committee's amendment within its jurisdiction, and not for consideration of the entire bill. 97–2, Apr. 5, 1982, p 6580.
- A reported bill to two other committees for different periods of time, solely for consideration of designated sections of the first committee's recommended amendment. 97–2, May 18, 1982, p 10418.
- A reported bill solely for consideration of designated portions of the first committee's amendment. 97–2, May 21, 1982, p 11169.

§ 6. Matters Subject to Referral

Generally

The rule establishing the referral procedures to be followed by the Speaker applies to ''each bill, resolution, or other matter'' relating to a subject falling within the jurisdiction of a standing committee under Rule X clause 1. See Rule X clause 5(a). Thus, the Speaker may pursuant to the rule refer bills and resolutions (*Manual* § 700), a portion of a bill (95–1, May 2, 1977, p 13184), a Presidential message (Rule XXIV clause 2) (*Manual* § 883), an executive communication (Rule XL) (94–1, Feb. 4, 1975, p 2253), or a select committee report (94–2, Mar. 16, 1976, p 6539; 94–2, Apr. 2, 1976, p 9261).

Senate Amendments to House Bills

Pursuant to Rule XXIV clause 2, a Senate amendment to a House-passed bill is subject to discretionary referral by the Speaker to a standing committee. 97–1, Mar. 26, 1981, p 5397. Under the House rules, House bills with Senate amendments which do not require consideration in Committee of the Whole may be at once disposed of as the House may determine. Rule XXIV clause 2. Such bills are accordingly laid before the House for action. *Manual* § 883. Unless otherwise disposed of by the House (8 Cannon § 3187), a House bill returned with a Senate amendment involving a new matter is at the Speaker's discretion referrable under Rule XXIV clause 2 directly to a standing committee, and on being reported therefrom is referred to the Committee of the Whole. 4 Hinds § 3108. Formerly, where a House bill was returned from the Senate with an amendment relating to a new and different subject, the reference was nevertheless to the committee having jurisdiction of the original bill. 4 Hinds §§ 4373, 4374. Under the modern practice, however, the Speaker has discretionary authority to refer from the Speaker's table Senate amendments to House-passed bills to any standing committees under the conditions permitted by Rule X clause 5, and in so doing the Speaker may include the imposition of a time limitation for consideration of a certain portion of the amendment. 97–1, Mar. 26, 1981, p 5397.

Senate Bills and Messages

Bills and joint and concurrent resolutions messaged from the Senate if referred at the Speaker's discretion, are referred to committees in the same manner as public bills originating in the House. Rule XXIV clause 2. Senate messages requiring consideration in Committee of the Whole (4 Hinds § 3101), and Senate bills (with certain exceptions, as where a similar House measure has been reported or ordered reported) are referred to the appropriate standing committees under direction of the Speaker without action by the House (6 Cannon § 727). Simple resolutions of the Senate that do not require any action by the House are not referred. 7 Cannon § 1048.

§ 7. Time Limitations on Referred Bills; Extensions

Generally

Pursuant to Rule X clause 5, the Speaker may impose a time limit for the consideration by any committee of a bill that is primarily or initially or sequentially referred. 94–2, May 17, 1976, p 14093; 100–2, June 30, 1988, p 16597; 103–1, Jan. 5, 1993, p ____. However, the rules of the House do not require the Speaker to impose limits on the period of time

which a committee may consider a bill, and he may sequentially refer a bill without setting a date certain on which the bill is to be reported (95–1, July 11, 1977, p 22183), or he may set a time limit as short as one day (94–2, Sept. 8, 1976, p 29274; 96–2, Mar. 20, 1980, p 6038).

On the last day of an expiring sequential referral, a committee has until midnight to file its report. 102–1, Oct. 9, 1991, p ____. Where the time period for reporting the bill to the House ends on a day when the House is not in session, the committee may file its report with the Clerk. 95–1, May 23, 1977, p 15865.

Rule X clause 5 is not construed to prevent a secondary committee from reporting prior to the primary committee. It is the intent of the rule to allow the primary committee to report before a measure is scheduled for floor consideration, unless it waives its right to report or the Speaker exercises discretion to impose a time limit on the primary committee for reporting and it fails to meet the deadline, in which case it will be considered to have been discharged of the measure. 104–1, Jan. 5, 1995, p ____.

Extensions of Time

The Speaker may extend the time limit set for the consideration of a referred bill, and he has exercised such authority with respect to bills that have been sequentially referred (96–1, May 30, 1979, p 12978), or divided for reference (96–1, Apr. 10, 1979, p 8104). Where the Speaker extends the time limit on a sequentially referred bill, he may also refer the bill to another committee for the same period. 94–2, June 1, 1976, p 16588.

More than one extension of time may be given by the Speaker to a committee considering a bill. In the 95th Congress, the Speaker extended for a second additional period the time limit for consideration by committee of portions of a bill which had been divided for reference. 95–1, July 18, 1977, p 23483.

Discharge of Committee

Where a committee does not report a measure to the House on or before the date specified by the Speaker pursuant to his authority under Rule X clause 5, the Speaker may discharge the committee from further consideration of the measure and refer it to the appropriate calendar or to another committee. 95–1, July 13, 1977, p 22733.

§ 8. Referrals to or From Special and Ad Hoc Committees

The Speaker may refer bills, resolutions, and other matters (including messages and communications) to an ad hoc committee established with the approval of the House. 95–1, Jan. 11, 1977, p 894; 95–1, Apr. 21, 1977,

p 11550. The House order authorizing the ad hoc committee may require that referrals to the committee shall be by initial or sequential reference or by some other method provided by Rule X clause 5. 95–1, Apr. 21, 1977, p 11550; 95–1, July 20, 1977, p 24167.

Normally, the reference of a matter to an ad hoc committee would not preclude a standing committee claiming jurisdiction from offering a motion for rereference of the matter under Rule XXII clause 4. 95–1, Apr. 21, 1977, p 11550.

Journal

Research References
4 Hinds §§ 2726–2883
6 Cannon §§ 623–637
1 Deschler Ch 5 §§ 8–14
Manual §§ 582, 621
U.S. Const. art. I § 5

§ 1. Generally; Publication

The Journal is a record of the proceedings of each legislative day in the House. The Journal—and not the *Congressional Record*—is the official record of the proceedings of the House (4 Hinds § 2727; *Manual* § 582), and certified copies thereof are admissible in judicial proceedings (28 USC § 1736).

The U.S. Constitution requires the House to keep a Journal and publish it excepting such as may require secrecy (art. I § 5). The purpose of this constitutional requirement is to insure that the proceedings of the House be a matter of public record. Deschler Ch 5 § 8.

§ 2. Matters Entered in the Journal

The content of the House Journal is governed by the U.S. Constitution, by statute, and by the rules and practices of the House itself. Deschler Ch 5 § 10. The Constitution sets forth the general requirement that the ''proceedings'' of the House be kept in the Journal (art. I § 5). It further specifies that the Journal reflect votes taken by the yeas and nays (§ 3, infra), as well

as veto messages from the President (art. I § 7), and since such matters are always entered in the Journal, no motion or request to that effect is necessary (Deschler Ch 5 § 10.4). Except as limited by these constitutional requirements, the House has the discretion to determine the content and format of its Journal, and it controls the extent to which House business is particularized therein. Deschler Ch 5 § 10.

Exclusions

The Journal records House actions and proceedings. It is not a verbatim transcript (89–1, Sept. 13, 1965, p 23600), and does not include:

- The rationale for, or all the circumstances attending, House action (4 Hinds §§ 2811, 2812).
- Verbatim accounts of debate and special-order speeches (89–1, Sept. 13, 1965, p 23600).
- The deliberations of the Committee of the Whole, except for recorded votes. Journal entries of recorded votes, see *Manual* § 630a.
- Unanimous-consent requests that meet with objection (Deschler Ch 5 § 10.2).
- Parliamentary inquiries or motions that are withdrawn or not entertained (4 Hinds §§ 2813, 2844).

Inclusions

Proceedings that are reflected in the Journal include:

- Public bills, resolutions, and documents introduced and referred under the rules (*Manual* § 854), by number, title, and committee of reference.
- Private bills, petitions, and memorials introduced and referred, with the exception of those measures determined to be of obscene or insulting character (*Manual* § 849).
- The name of the Member introducing the measure together with the words ''by request'' if appropriate (Deschler Ch 5 § 10.7).
- Special rules from the Committee on Rules providing for the consideration of a measure.
- The disposition of measures called up for consideration in the House or Committee of the Whole.
- Questions of order arising during the proceedings of the House (*Manual* § 641).
- Reports of committees delivered to the Clerk for printing and reference, by title or subject (*Manual* § 743).
- Motions entertained by the Speaker—including motions to amend (*Manual* § 580)—unless withdrawn on the same day (*Manual* § 775).
- Motions to discharge when signed by a majority of the total membership (*Manual* § 908).
- The discharge of the Committee of the Whole from the further consideration of a bill (Deschler Ch 5 § 10.9).

- Conference reports and the disposition thereof (*Manual* § 542).
- Messages giving notice of bills passed or approved (*Manual* § 935).
- Veto messages from the President (U.S. Const. art. I § 7).
- Unanimous-consent requests agreed to by the House, and action taken pursuant thereto.
- The names of Members speaking pursuant to a special order and the time allocated therefor.
- Expungements from the *Congressional Record* ordered by the House (Deschler Ch 5 § 10.10).
- Disciplinary censure of a Member pursuant to order of the House (2 Hinds § 1251).
- The time of adjournment (*Manual* § 790).

§ 3. — Votes and Quorum Calls

The Journal must reflect certain information relating to votes, roll calls, and quorum calls. The Journal should record the result of every vote and state in general terms the subject of that vote (4 Hinds § 2804). The U.S. Constitution requires that votes taken by the yeas and nays be entered in the Journal (art. I § 5). The Journal should further disclose:

- The names of those Members voting on each side of the question, as well as those not voting, when a recorded vote is taken pursuant to Rule I clause 5 (*Manual* § 630).
- The names of those Members recorded electronically as voting on any roll call or quorum call taken pursuant to Rule XV clause 5 (*Manual* § 774b).
- The names of those Members told by clerks when the Speaker in the absence of a quorum directs that the presence of Members be determined by this procedure in lieu of the electronic system (*Manual* § 771b).
- The names of those Members voluntarily appearing to be recorded as present when a call of the House in the old form is conducted (*Manual* § 768).
- The names of those Members recorded as absent after a quorum call (*Manual* § 771b).

§ 4. Reading and Approval

Pursuant to a recent change in Rule I clause 1, the Speaker is authorized to announce his approval of the Journal. The Speaker's approval of the Journal is deemed agreed to subject to a vote on demand of any Member. *Manual* § 621.

THE SPEAKER: The Chair has examined the Journal of the last day's proceedings and announces to the House his approval thereof. Without objection, the approval is agreed to.

MEMBER: Mr. Speaker, I object.

THE SPEAKER: The gentleman from _____ objects to the Speaker's approval of the Journal. The question is on agreeing to the Speaker's approval. Those in favor will say ''Aye'', those opposed ''No.''

MEMBER: Mr. Speaker, I ask for the Yeas and Nays . . . [or] . . . I make a point of order that a quorum is not present and object to the vote on the ground that a quorum is not present.

Since the approval of the Journal is legislative business and is in order only in legislative sessions, it is not in order when the House has precluded *any* legislative business during a pro forma session (96–2, Jan. 7, 1980, p 25).

At one time, the reading of the Journal of each legislative day was mandatory and could be dispensed with only by unanimous consent (6 Cannon § 625) or under suspension of the rules (4 Hinds § 2747). Today, however, if the Speaker after examining the Journal announces his approval thereof, the Journal is to be considered as read (*Manual* § 621). Pursuant to this timesaving procedure, the House ordinarily dispenses with the actual reading of its Journal. But if the Speaker's approval is disagreed to, the rules authorize the making of one motion that the Journal be read (§ 6, infra). When the reading is ordered, a motion to amend the Journal is in order after the reading is completed (§ 9, infra).

The Speaker's approval of the Journal no longer requires the presence of a quorum. And the rules specify that a point of order of no quorum may not be made during a reading of the Journal if the presence of a quorum has once been ascertained on that day (*Manual* § 774c). But if a quorum fails to respond on a motion incident to the approval, reading or amendment of the Journal, and there is an objection to the vote on that ground, a call of the House is automatic (95–1, Feb. 2, 1977, p 3342).

Since the Journal is the official record of the proceedings of the House, its approval is not subject to the requirement that it correspond with the *Congressional Record* (Deschler Ch 5 § 14.2). The Journal is controlling in the event of a discrepancy between the Journal and the Record (89–1, Jan. 8, 1965, p 452). There should be no delay in the approval of the Journal merely because its description of an action taken is inconsistent with the description of the same matter in the Record (Deschler Ch 5 § 14.2). The reading of the Journal may not be interrupted by a request to correct the Record (Deschler Ch 5 § 12.23).

§ 5. — Precedence; Interruptions

When the House convenes for a new legislative day the approval of the Journal is first in order of business after the daily prayer (*Manual* § 878), even if it is the second legislative day on the same calendar day. 97–1, Nov. 17, 1981, p 27772. It follows that the transaction of House business, how-

ever highly privileged, prior to such approval, is not in order (90–2, Oct. 8, 1968, p 30095). Thus, the approval of the Journal takes precedence over reports from the Committee on Rules (Deschler Ch 5 § 12.2), as well as reports from conference committees (*Manual* § 909). Similarly, motions incident to the approval of the Journal, such as a motion to amend it, take precedence over motions relating to the consideration of bills (Deschler Ch 5 § 18.8). But certain procedural matters are permitted to intervene even though the approval of the Journal is pending. They include:

- Simple motions to adjourn (Deschler Ch 5 § 12.3).
- Administration of the oath to a Member-elect (Deschler Ch 5 § 12.5).
- Parliamentary inquiries (88–2, Apr. 9, 1964, p 7356).
- The reception of messages from the Senate during an interruption of the reading of the Journal (Deschler Ch 5 § 12.12).
- The reception of messages from the President received during an interruption of the reading (87–2, Aug. 27, 1962, p 17651).
- Requests that Calendar Wednesday business be dispensed with where such requests are made before (Deschler Ch 5 § 12.10) but not during (Deschler Ch 5 § 12.24) the reading.
- Questions of privilege affecting the House collectively (2 Hinds § 1630).
- Arraignments of impeachment (6 Cannon § 469).

Of course, the House may by unanimous consent specifically authorize that certain proceedings (such as the Speaker's declaration of a recess) be taken up prior to the Journal (Deschler Ch 5 § 12.8). And the Speaker has the discretion to entertain unanimous-consent requests made prior to the taking up of the Journal (Deschler Ch 5 § 12.9), but he may decline to do so if a reading thereof is pending (Deschler Ch 5 § 12.11).

§ 6. Motions That the Journal Be Read

If the Speaker's approval of the Journal is disagreed to under Rule I clause 1, one motion that the Journal be read is in order (*Manual* § 621):

MEMBER: Mr. Speaker, I move pursuant to the Rules of the House that the Journal be read.

THE SPEAKER: The question is, shall the Journal be read?

The motion is privileged but not debatable (94–1, Apr. 23, 1975, p 11482).

§ 7. Reading Practices and Customs

Journal readings, when permitted under the modern practice, are conducted in accordance with the customs of the House (Deschler Ch 5 § 11.1). Pursuant to a custom of long-standing, when the Journal Clerk reads the

Journal for the previous day, he omits such matters as the names of Members responding to roll calls and the texts of messages received. But after the Speaker or the House has ordered that the Journal be read, a Member may demand that the Journal be read in full (Deschler Ch 5 § 11.3), in which case the Clerk must read the Journal for the previous day in its entirety, including:

- The names of Members responding to roll calls (88–2, Apr. 9, 1964, p 7355).
- The names of Members responding to yea and nay votes (Deschler Ch 5 § 11.5).
- The text of any messages from the President (86–2, May 4, 1960, p 9413).

Where a demand that the Journal be read in full is made after a portion thereof has been read, the Clerk begins a detailed reading at that point and does not return to reread that portion which has been passed (89–1, Sept. 13, 1965, p 23598).

The reading of the Journal by the Clerk may be terminated by unanimous consent (Deschler Ch 5 § 11), and may be temporarily suspended or waived in the event of disorder on the floor (2 Hinds § 1630; 4 Hinds § 2759) or pending a discussion of the validity of the previous day's adjournment (89–1, July 16, 1965, p 17102).

§ 8. Motions to Approve

A motion to approve the Journal is ordinarily unnecessary under the modern practice of the House, because the Speaker is authorized under Rule I clause 1 to examine it and announce his approval thereof. However, the Speaker's approval may be put to a vote on demand of a Member (*Manual* § 621). And if the Speaker orders that the Journal be read, or if the House adopts a motion to that effect, a motion that the Journal be approved as read may be entertained:

> MEMBER [*after the Clerk has concluded the reading of the Journal*]: Mr. Speaker, I move that the Journal as read stand approved; and on that motion I move the previous question.
>
> THE SPEAKER: The question is on ordering the previous question. . . .
>
> THE SPEAKER [*after an affirmative vote on the previous question*]: The question is, shall the Journal of the last day's proceedings stand approved?
>
> *Note:* The yeas and nays may be had on votes taken in connection with the motion to approve (Deschler Ch 5 § 14.9).

If the motion to approve is adopted by the House, further motions incident to the reading or correction of the Journal are out of order. If the mo-

tion to approve is rejected by the House, the Journal is subject to amendment (see § 9, infra).

The motion to approve the Journal as read should be made when the Clerk completes his reading, but the Speaker may entertain such a motion even though it interrupts the reading in the absence of a timely objection thereto (Deschler Ch 5 §§ 14.3–14.6).

The motion to approve is debatable until the previous question is ordered on that motion. A Member may demand the right to debate the motion even after the ordering of the previous question (89–1, Sept. 13, 1965, p 23602), if he invokes his right to do so under the so-called 40-minute rule (Rule XXVII clause 3), provided that there has been no previous debate on the motion (*Manual* § 907).

The motion to approve may be disposed of by the adoption of a motion to lay on the table (Deschler Ch 5 § 14.8) even though the previous question has been demanded on the motion to approve; in such cases the motion to table the motion to approve is entertained and first put (89–1, Sept. 13, 1965, p 23600). The question of agreeing to the Speaker's approval of the Journal is also subject to postponement pursuant to Rule I clause 5(b)(1).

§ 9. Amendments and Corrections

Errors or omissions in the previous day's Journal may be corrected by motion or by unanimous consent:

> MEMBER [*after obtaining recognition*]: Mr. Speaker, I move to amend the Journal by inserting [*or by striking or by striking out and inserting*] _____.

The Member offering the motion is recognized under the hour rule. 101–2, Mar. 19, 1990, p 4488. The motion to amend the Journal is in order after the Journal has been read (89–1, Sept. 13, 1965, p 23598); it may not be entertained prior to (Deschler Ch 5 § 13.1), or during (89–1, Sept. 13, 1965, p 23598), the reading. The motion to amend is not in order after the approval of the Journal by the House. The motion to amend takes precedence over the motion to approve (Deschler Ch 5 § 13), but will not be admitted after the previous question has been demanded on the motion to approve (89–1, Sept. 13, 1965, p 23600).

Matters extraneous to the Journal, such as an expression of an opinion by a Member as to a ruling made by the Chair on the previous legislative day, may not be offered by way of the motion to amend (4 Hinds § 2848).

The motion to amend is applicable only to the Journal of the previous day. Corrections relating to a Journal of a day *prior* to the previous legislative day are made by unanimous consent (Deschler Ch 5 § 13).

Lay on the Table

Research References
5 Hinds §§ 5389–5442
8 Cannon §§ 2649–2660
7 Deschler Ch 23 §§ 9–13
Manual §§ 445, 782, 785

§ 1. In General; Effect

The motion to table (or, under the more formal terminology of the Rule XVI clause 4, to ''lay on the table'') is used to adversely dispose of a proposition pending in the House. Deschler Ch 23 § 9.1. *Manual* § 785. The table referred to in Rule XVI is the Clerk's table, not the Speaker's table. 5 Hinds § 5389 (note).

The language ''to lay on the table''—to the extent that it implies that the tabled matter is only temporarily in abeyance—is misleading. The motion is not used simply to put aside a pending matter. The action of the House in adopting the motion to table a proposition is equivalent to a final adverse disposition thereof (Deschler Ch 23 § 9.1), and does not merely represent a refusal to consider it. 95–2, Aug. 15, 1978, p 26204. In this respect the House practice differs from general parliamentary usage, which permits the use of the motion to temporarily suspend consideration of a matter. Under the modern practice in the House, a tabling action is ordinarily as much a final adverse decision as a negative vote on the passage of a bill. 5 Hinds § 6540 (note). With few exceptions, matters laid on the table may be taken therefrom only by unanimous consent or by a motion to suspend the rules. § 8, infra. The pending proposition being disposed of finally and

adversely, the adoption of the motion may have the effect of depriving a Member of his right to debate a proposition he has offered. Deschler Ch 23 § 9.2.

If the House rejects the motion to table a proposition, the proposition is before the House for disposition. Deschler Ch 23 §§ 9.19, 12.3.

§ 2. When in Order

The motion to table is in order only in the House; it is not in order in the Committee of the Whole (4 Hinds §§ 4719, 4720; 8 Cannon §§ 2330, 2556a; Deschler Ch 23 §§ 9.29, 9.30; 104–1, Mar. 16, 1995, p ____) and does not apply to motions to go into the Committee of the Whole (6 Cannon § 726). It is not applicable to propositions which are neither debatable nor amendable. *Manual* § 785.

A motion to table a proposition is in order after the proposition is called up for consideration but before debate thereon. 95–2, July 13, 1978, p 20606; 98–2, Oct. 4, 1984, p 30042. The motion is in order before the Member entitled to prior recognition for debate on the pending proposition has begun his remarks. 5 Hinds §§ 5393–5395; 6 Cannon § 412; 8 Cannon § 2649. The motion comes too late after the Chair has put the question on the pending proposition and asked for a vote. 96–1, Sept. 20, 1979, p 25512. The motion is in order after the previous question has been moved on the pending proposition, but may not be made after the previous question has been ordered (5 Hinds §§ 5415–5422; 8 Cannon § 2655; Deschler Ch 23 § 9), or after the yeas and nays have been ordered thereon (5 Hinds § 5408).

§ 3. Precedence

Generally

The motion to table is a preferential motion and is said to be of high privilege. Deschler Ch 23 §§ 9, 11.2. It yields to the motion to adjourn (*Manual* § 782; Deschler Ch 23 § 9) and to the question of consideration (5 Hinds § 4943). Under the rules of the House, however, it enjoys precedence over the motions for the previous question, to postpone, to refer, or to amend. Rule XVI clause 4 (*Manual* § 782). A motion to table a measure is thus of higher privilege than a motion to refer the measure to a committee. 5 Hinds § 5303; Deschler Ch 23 § 12.5.

As Related to the Motion for the Previous Question

Pending the ordering of the previous question on a proposition which is under debate, the motion to table the proposition is preferential and is voted on first. Deschler Ch 23 §§ 9.11, 12.1; *Manual* § 785. Although a mo-

tion to table is not in order after the previous question has been ordered on a pending proposition (5 Hinds §§ 5415–5422), if the previous question is voted down, the motion to table again becomes in order (Deschler Ch 23 § 9.21) and is preferential (Deschler Ch 23 § 12.2).

§ 4. Application to Particular Propositions

Generally; Bills and Resolutions

The motion to table has been held specifically applicable to:

- A House bill. 5 Hinds § 5426.
- A House bill with Senate amendments. 5 Hinds § 6140.
- A vetoed bill. 4 Hinds § 3549.
- A House resolution and an amendment thereto. 5 Hinds § 6139.
- A series of resolutions on a particular subject. 5 Hinds § 6138.
- A privileged resolution. 95–2, July 13, 1978, p 20606.
- A resolution proposing an impeachment (Deschler Ch 23 § 9.14) or authorizing an impeachment investigation (6 Cannon § 541).
- A resolution raising a question of the privileges of the House. 6 Cannon § 560; Deschler Ch 23 § 9.25.
- A resolution to expel a Member. 94–2, Oct. 1, 1976, p 35111.
- A resolution establishing a select committee. Deschler Ch 23 § 9.22.
- A resolution of inquiry adversely reported from committee. Deschler Ch 23 § 9.17.
- A resolution providing for adjournment *sine die*. Deschler Ch 23 § 9.10.
- An appeal from a decision of the Speaker. 8 Cannon § 3453; Deschler Ch 23 § 9.3.

Special Orders

Special orders of business reported from the Committee on Rules and called up under clause 4(b) of Rule XI, are not subject to the motion to table, as that rule prohibits dilatory motions. *Manual* § 729b. However, after rejection of the previous question, the motion to table has been applied to a resolution providing a special order. Deschler Ch 23 § 9.23.

The motion to table may not be applied to a resolution providing a special order if the resolution is before the House under the operation of the discharge rule, because such rule prohibits such intervening motion. Deschler Ch 23 § 9.28.

Conference Reports

In the later practice, the motion to table has not been applied to conference reports on bills in disagreement between the Houses, since this would carry the entire bill and amendments of the other House to the table

and would leave no opportunity for the House and Senate to have a second conference. 5 Hinds §§ 6539, 6540. See *Manual* § 785.

§ 5. Application to Particular Motions

The motion to table is applicable to debatable secondary motions for the disposal of another matter (*Manual* § 785), such as a motion to refer (5 Hinds § 5433; 97–2, Aug. 13, 1982, p 20978), or a motion to recede and concur in a Senate amendment in disagreement. 95–2, Feb. 22, 1978, p 4072. The motion has been held specifically applicable to:

- A motion to approve the Journal. Deschler Ch 23 § 9.11.
- A motion to postpone to a day certain. 8 Cannon §§ 2654, 2657.
- A motion to rerefer a bill to a committee. Deschler Ch 23 § 9.12.
- A motion to instruct conferees. Deschler Ch 23 §§ 9.7, 9.8.
- A motion to reconsider a vote. 8 Cannon §§ 2652, 2659; 95–2, Apr. 20, 1978, p 10990.

The motion to table may not be applied to a motion relating to the order of business (Deschler Ch 23 § 9.27), nor to any motion which is neither debatable nor amendable (Deschler Ch 23 § 9.26). The motion is inapplicable to:

- Motions for the previous question. 5 Hinds §§ 5410, 5411; 103–2, Oct. 4, 1994, p ____.
- Motions to dispose of measures on which the previous question has been ordered. 8 Cannon §§ 2653, 2655.
- Motions to recommit made after the ordering of the previous question. 5 Hinds §§ 5412–5414; 8 Cannon §§ 2653, 2655.
- Motions to dispense with further proceedings under a call of the House. 87–2, Aug. 27, 1962, pp 27651–54; Deschler Ch 23 §§ 9.26, 12.4.
- Motions to go into the Committee of the Whole. 5 Hinds § 5404; 6 Cannon § 726.
- Motions limiting the time for debate. 5 Hinds § 5403.
- Motions to suspend the rules. 5 Hinds §§ 5405, 5406; Deschler Ch 23 § 9; *Manual* § 785.
- Motions to proceed to the consideration of a disapproval resolution. Deschler Ch 23 § 11.3.
- Motions that when the House adjourn it stand adjourned until a day and time certain. Manual § 785.
- Motions to adjourn. 101–2, Aug. 3, 1990, p ____.

The motion to table may not be applied to a motion to discharge a committee under clause 3, Rule XXVII (Deschler Ch 23 § 9.16) unless the proposition before the committee is a vetoed bill (Deschler Ch 23 § 9.15) or a resolution of inquiry. 5 Hinds § 5407; 6 Cannon § 415; *Manual* § 785.

§ 6. Offering the Motion; Debate and Disposition

Generally; Debate

The motion to table, although customarily made orally from the floor, is subject to a timely demand that it be in writing. Deschler Ch 23 § 10.1.

MEMBER: Mr. Speaker, I move to lay the _____ [*proposition*] on the table.

The motion to table is not debatable. Rule XVI clause 4; 5 Hinds § 5301; 6 Cannon § 412; 8 Cannon § 2465; Deschler Ch 23 § 9.6; 102–1, Oct. 16, 1991, p ____. Debate may be permitted by unanimous consent, however (98–2, Oct. 4, 1984, p 30042). And the chairman of a committee reporting a proposition to the House with the recommendation that it be tabled is entitled to recognition for debate before so moving. 6 Cannon § 412.

Disposition of Motion

It has been established that the motion to table:

- May not be amended. 5 Hinds § 5754; 102–1, Oct. 16, 1991, p ____.
- May not be divided for a vote. 5 Hinds §§ 6138–6140.
- May be reconsidered pursuant to motion. 5 Hinds § 5628, 5629, 6288; 8 Cannon § 2785.
- May be repeated after intervening business (5 Hinds §§ 5398–5400), but a call of the House alone is not considered sufficient ''intervening business.'' 5 Hinds § 5401.

§ 7. Collateral Matters Carried to the Table

A bill or other proposition may be carried to the table when the House votes to table a proposal that is closely related thereto. Thus, when a proposed amendment to a pending measure is tabled, the pending measure also goes to the table. 5 Hinds §§ 5423, 5424; 8 Cannon § 2656. This rule is applied even where a Senate amendment to a House bill is tabled. 5 Hinds § 5424. The tabling of a bill has been held to result in the tabling of a pending motion to print the bill. 5 Hinds § 5426. However, the tabling of a proposition will not take to the table those pending motions which are ''entirely independent'' thereof. Thus it has been held that the tabling of a motion to postpone consideration of a Senate amendment does not carry to the table with it pending motions for disposition of the amendment. 8 Cannon § 2657. The tabling of a proposal will not result in the tabling of a connected matter

unless it is directly and intimately related thereto. 8 Cannon § 2658. It has been held, for example, that:

- The tabling of an amendment to the Journal does not carry the Journal to the table. 5 Hinds §§ 5435, 5436.
- The tabling of a proposition for adverse disposition of a pending matter does not carry to the table the matter proposed to be disposed of. 8 Cannon § 2660.
- The tabling of a motion to reconsider a vote does not carry with it the proposition voted on. 8 Cannon §§ 2652, 2659.
- A motion to instruct conferees may be tabled without carrying to the table the bill in disagreement. 8 Cannon § 2658.
- The tabling of a resolution providing for the final disposition of an impeachment proceeding does not carry such proceeding to the table with the resolution. 6 Cannon § 538.
- A preamble may be tabled without carrying with it accompanying resolutions already agreed to. 5 Hinds § 5430.
- The tabling of a resolution does not take with it a connected resolution already agreed to. 5 Hinds § 5428.
- The tabling of a motion to receive a petition does not carry the petition with it. 5 Hinds §§ 5431–5433.
- The tabling of an appeal from a decision of the Speaker on a question of order does not carry with it the matter that was pending when the question of order arose. 5 Hinds § 5434.

A motion to refer or a motion to recede and concur in a Senate amendment in disagreement may be laid on the table without carrying the pending matter to the table since other motions remain available for disposition of the pending amendment. *Manual* § 785.

§ 8. Taking From the Table; Reconsideration

With the exception of questions of privilege (5 Hinds §§ 5438, 5439), propositions to impeach (3 Hinds § 2049), and bills vetoed by the President (5 Hinds § 5439), a matter once laid on the table can be taken therefrom only by unanimous consent (Deschler Ch 23 §§ 13.1, 13.2) or the motion to suspend the rules (5 Hinds § 6288). Since the motion to take from the table does not enjoy privileged status, a single Member, by demanding that business proceed in regular order, may prevent the consideration of the motion. 5 Hinds § 5381. However, an affirmative vote on a motion to table may be reconsidered pursuant to a timely motion therefor. 5 Hinds § 5628; 8 Cannon § 2785. Moreover, a measure that has been tabled by the House may be presented again in similar but not identical form. 4 Hinds § 3385.

Messages Between the Houses

Research References
5 Hinds §§ 6590–6662
8 Cannon §§ 3333–3353
Manual §§ 330, 561–569, 882, 883

§ 1. In General; Uses

The House of Representatives and the Senate communicate and coordinate their activities by sending formal messages to each other. These messages between the two Houses constitute the sole source of official information regarding actions taken by the other House. 8 Cannon §§ 3342, 3343. The Chair does not take public notice of the proceedings of the Senate unless formally brought to the attention of the House by message from the Senate. 91–1, July 10, 1969, p 19095.

Messages between the House and Senate are used for a variety of legislative purposes:

- To indicate the final disposition by one House of a bill originating in the other;
- To convey the official papers accompanying bills from one House to the other;
- To transmit the action of one House on an amendment of the other;
- To request the return of bills or amendments;
- To convey information relating to committees of conference and reports relating thereto;
- To transmit information relating to the election of officers and other organizational matters;
- To indicate House or Senate action on vetoed bills;
- To convey information or documents relating to an impeachment proceeding; and
- To dispose of questions regarding a breach of privilege by one House against the other.

Such messages have also been used on rare occasions to transmit or exchange confidential information between the two Houses. 5 Hinds § 5250.

The Clerk or one of his subordinates delivers the messages of the House to the Senate. Senate messages are delivered to the House by the Secretary of the Senate or one of his subordinates. 5 Hinds § 6592.

§ 2. Reception of Messages

The refusal of one House to receive a message from the other is a breach of the practice of comity between the two Houses. See 91–2, Oct. 14, 1970, p 36675. The reception of a message from the Senate is a highly privileged matter and may interrupt the consideration of a bill, even though the previous question has been ordered thereon. 87–1, May 3, 1961, p 7172. Compare 5 Hinds § 6602. Messages are received during debate, the Member having the floor yielding at the request of the Speaker. *Manual* § 561. Such a message may be received in the absence of a quorum (8 Cannon § 3339) and pending a motion for a call of the House. 90–2, Oct. 8, 1968, p 30091; 95–2, Oct. 14, 1978, p 38711. The Speaker may receive the message even before the approval of the Journal. 89–1, Sept. 13, 1965, p 23607. Messages generally, see *Manual* § 563.

A message from the Senate may not be received when the House is in the Committee of the Whole (94–1, Oct. 9, 1975, p 32551), but the Committee may rise formally (or informally) to permit the reception of such messages. 87–1, Mar. 22, 1961, p 4563; 93–2, May 22, 1974, pp 16150, 16151; 94–1, Oct. 9, 1975, p 32551.

Whereas it was formerly the custom to transmit messages only when both Houses were sitting, the present practice permits the reception of messages regardless of whether the other House is in session. 8 Cannon § 3338. A new rule of the House now permits the reception by the Clerk of messages from the Senate notwithstanding the recess or adjournment of the House. Rule III clause 5 (*Manual* § 647b).

§ 3. Messages Relating to Bills

Generally

Messages from the Senate concerning House bills with Senate amendments or Senate bills which require action by the Committee of the Whole go to the Speaker's table and may be referred to the appropriate standing committees in the same manner as public bills presented by the Members. *Manual* § 882. Those which do not require consideration in the Committee of the Whole may be laid before the House for consideration pursuant to

Rule XXIV clause 2. *Manual* § 883. See SENATE BILLS; AMENDMENTS BETWEEN THE HOUSES.

Senate messages giving notice of bills passed or approved are entered in the Journal and published in the Record. *Manual* § 935.

Requests for the Return of a Bill

A message from the Senate requesting that the House return a bill must be presented to the House for consideration. 86–1, Sept. 14, 1959, p 19715. A request of the Senate for the return of a bill is treated as privileged in the House (86–1, Sept. 14, 1959, p 19715), and may be disposed of by unanimous consent or by motion. 91–2, Sept. 9, 1970, p 30850; 93–1, July 10, 1973, p 23027; 93–2, Apr. 25, 1974, p 11881. A request of the Senate for the return of a bill being treated as privileged, the Chair may immediately put the question on the request without debate. 91–2, Dec. 29, 1970, p 43776. The House may by unanimous consent agree to a request of the Senate for the return of a Senate bill even where the bill has been referred to a House committee. 86–2, Jan. 21, 1960, p 1022; 91–1, July 10, 1969, p 19095. A request of the House for return of a bill messaged to the Senate is not privileged where no error is involved, as it cannot be a substitute for reconsideration. (Reconsideration of vote, see RECONSIDERATION).

§ 4. Errors; Lost Documents

A proposition to correct an error in a message by one House to the other presents a question of privilege. 3 Hinds § 2613. One House may correct an error in its message to the other, the receiving House concurring in the correction. 5 Hinds § 6607. If the Clerk or Secretary commits an error in delivering a messaged document, he may be directed to correct it. In one instance, where the Secretary of the Senate had delivered only one of two Senate amendments to a House bill, the mistake was not discovered until after the House had disagreed to the Senate amendment. The Senate then directed the Secretary to correct the mistake; the correction was received and the House acted on the two amendments *de novo*. 5 Hinds § 6590.

Where an official document intended for delivery to the Senate is lost and cannot be retrieved, the preparation of official duplicates thereof may be provided for pursuant to concurrent resolution. Such resolutions are privileged for consideration. In such cases the Clerk attests to the authenticity of an existing printed copy or duplicate original. See 102–2, Oct. 5, 1992, p ____, and H. Con. Res. 376.

Misconduct; Sanctions

A. Introductory

B. Basis for Imposing Sanctions

C. Nature and Forms of Disciplinary Measures

Research References
2 Hinds §§ 1236–1289

6 Cannon §§ 236–239
3 Deschler Ch 12 §§ 12–18
U.S. Const. art. I § 5 clause 2; § 6 clause 1
Manual §§ 62, 698, 726, 939
House Ethics Manual, 102–2, April 1992

A. Introductory

§ 1. In General

Authority; Definitions and Distinctions

The authority of the House to discipline its Members flows from the Constitution. It provides that each House may ''punish its Members for disorderly Behaviour, and, with the concurrence of two thirds, expel a Member.'' U.S. Const. art. I § 5 clause 2.

The primary disciplinary measures that may be invoked by the House against one of its Members include: (1) expulsion, (2) censure (3) reprimand, (4) fine or other economic sanction, and (5) deprivation of seniority or committee status. See §§ 19 *et seq.*, infra. These remedies are not mutually exclusive. In a given case, a Member may be censured *and* fined, and deprived of his seniority as well. Deschler Ch 12 § 12.1. Imprisonment of a Member is a form of punishment that is theoretically within the power of the House to impose, but such action has never been taken by the House. Deschler Ch 12 § 12. The disciplinary measures referred to herein are separate and distinct from the sanctions of fine or imprisonment that may be available under a criminal statute at the state or federal level. See § 9, infra.

Exclusion Distinguished

The power of exclusion springs from Congress' right to determine the qualifications of its Members, whereas the power of expulsion stems from its authority to discipline Members for misconduct. This distinction has not always been recognized. In 1870, a Member was excluded from the 41st Congress on the ground that he had sold appointments to the Military Academy. 1 Hinds § 464. In 1967, after an investigating committee recommended that a Member (Adam Clayton Powell) be fined and censured for improperly maintaining his wife on the clerk-hire payroll and for improper use of public funds for private purposes (H. Rept. No. 90–27), the House voted to impose a stronger penalty—to exclude him by denying him his seat. Deschler Ch 12 §§ 14.1, 16.1. However, the U.S. Supreme Court determined that exclusion is not a sanction to be invoked in cases involving the misconduct of Members. It is available only for failure to meet the constitutional qualifica-

tions of Members as to age, citizenship, and inhabitancy. *Powell* v *McCormack*, 395 US 486 (1969).

§ 2. Committee on Standards of Official Conduct

Generally

Prior to the 90th Congress, select temporary committees were ordinarily created to consider allegations of improper conduct against Members, and to recommend such disciplinary measures as might be appropriate. Deschler Ch 12 § 2. In the 90th Congress, the Committee on Standards of Official Conduct was made a standing committee of the House (H. Res. 418, Apr. 13, 1967). It was given the right to report as privileged resolutions recommending action by the House with respect to the official conduct of any Member, officer, or employee of the House. See Rule XI clause 4(a). *Manual* § 726.

Legislative Jurisdiction

The Standards Committee has legislative jurisdiction over measures relating to the Code of Official Conduct. Rule X clause 1(p). *Manual* § 685. Such measures are not privileged for immediate consideration when reported by that committee, but may be considered in the House pursuant to a special order from the Committee on Rules. 94–1, Apr. 16, 1975, p 10339 (H. Res. 396).

Investigative Jurisdiction; Recommendations and Reports

Pursuant to Rule X, the Standards Committee is authorized to conduct investigations, hold hearings, and is to report any findings and recommendations to the House. Clause 4(e). *Manual* § 698. This committee has the additional function of conducting investigations and making the reports and recommendations required by House resolutions authorizing specific investigations. On occasions where the House has directed the committee to conduct specific investigations by separate resolution, it has authorized the committee to take depositions, to serve subpenas within or without the United States, to participate by special counsel in relevant judicial proceedings (see H. Res. 252, Feb. 9, 1977; H. Res. 608, Mar. 27, 1980), and to investigate, with expanded subpena authority, persons other than Members, officers, and employees (see H. Res. 1054, Mar. 3, 1976).

By resolutions considered as questions of the privileges of the House, the committee has been directed:

- To investigate illegal solicitation of political contributions in the House Office Building by unnamed sitting Members (99–1, July 10, 1985, p 18397);
- To review GAO audits of the operations of the ''bank'' in the Office of the Sergeant-at-Arms (102–1, Oct. 3, 1991, p ____);
- To disclose the names and pertinent account information of Members found to have abused the privileges of the ''House bank'' (102–2, Mar. 12, 1992, p ____); and
- To investigate violations of confidentiality by staff engaged in the investigation of the operation and management of the Office of the Postmaster (102–2, July 22, 1992, p ____).

Under § 803 of the Ethics Reform Act of 1989, and effective Jan. 3, 1991, the Standards Committee is directed to adopt rules governing its proceedings that separate the investigative and adjudicative functions within the existing committee structure. An investigative subcommittee is established whenever the committee votes to undertake a preliminary inquiry. If the investigative panel issues a Statement of Alleged Violation, a subcommittee on adjudication, consisting of the remaining members of the full committee, is then constituted to hear the evidence. The findings of the adjudicatory panel are reported to the full committee which then decides what recommendation or sanctions, if any, to submit to the House. The Act also amends Rule X clause 4(e)(1) to provide that any letter of reproval or other administrative action of the committee may only be implemented as a part of its report to the House, and to require the committee to report to the House on the final disposition of any case it has voted to investigate.

§ 3. — Membership; Eligibility for Committee Service; Disqualification

The Committee on Standards of Official Conduct, unlike other standing committees of the House (where the majority party has a preponderance of the elected membership), is constituted of equal numbers of members from the majority and minority parties. Rule X clause 6(a)(2). Service on the committee is also limited so no Member can serve for more than three Congresses in any 10-year period. *Manual* § 701a.

The rules provide that a member of the Standards Committee shall be ineligible to participate in a committee proceeding relating to his or her own conduct. Rule X clause 4(e)(2)(D). Under this rule, where it was contended that four members of the committee were ineligible to adjudicate a complaint because of their personal involvement in the conduct alleged in the

complaint, the Speaker named four other Members to act as members of the committee in all proceedings on the complaint in the same political party ratio represented by the party affiliation of the four ineligible members. 94–1, Sept. 11, 1975, p 28600.

The rules permit a member of the committee to disqualify himself from participation in any committee investigation in which he certifies that he could not render an impartial decision, and authorize the Speaker to appoint a replacement for that investigation. See Rule X clause 4(e)(2)(E). Under this rule, where a member of the committee submits an affidavit of disqualification in a disciplinary investigation of another Member (96–2, Mar. 18, 1980, p 5752), or where a member of the committee is himself the subject of an ethics inquiry and has notified the Speaker of his ineligibility (96–2, Feb. 5, 1980, p 1908), the Speaker may appoint another Member to serve on the committee during the investigation.

§ 4. — Publications; Advisory Opinions

The Committee on Standards of Official Conduct is authorized to issue and publish advisory opinions with respect to the general propriety of any current or proposed conduct. Rule X clause 4(e). The advisory opinions issued by the committee include:

- No. 1—On the role of a Member in communicating with federal agencies
- No. 2—On the subject of a Member's clerk-hire
- No. 3—On foreign travel at the expense of foreign governments (superseded, 1981)
- No. 4—On the propriety of accepting nonpaid transportation (superseded, 1981)
- No. 5—General interpretation of House Rule XLIII clause 11 as to unauthorized use of congressional letterhead
- No. 6—Interpretation of House Rule XLIII clause 6 and House Rule XLV, as to the use of campaign funds to promote a town meeting

The Select Committee on Ethics, which was established during the 95th Congress, and was the precursor of the present standing committee, was authorized to issue advisory opinions respecting the application of Rules XLIII through XLVII. 95–1, May 18, 1977, p 15449. The advisory opinions included:

- No. 1—Effective date of House Rule XLVI clause 4, relating to the use of private funds for mass mailings
- No. 2—Applicability of House Rule XLIII clause 4, to reimbursement or payment of expenses associated with conference, meeting, or similar event

- No. 3—Applicability of House Rule XLIII clause 4, to acceptance of free transportation on inaugural flights
- No. 4—Solicitation of cash gifts of less than $100 for personal use through mass mailings
- No. 5—Use of campaign funds to pay for official expenses incurred prior to Mar. 3, 1977
- No. 6—Acceptance of in-kind services for official purposes
- No. 7—Definition of a gift for purposes of House Rule XLIII clause 4
- No. 8—Applicability of House Rule XLIII clause 4 to acceptance of necessary expenses paid by an organization in connection with a fact-finding event
- No. 9—Definition of an indirect gift for purposes of House Rule XLIII clause 4
- No. 10—Who has a direct interest in legislation before Congress
- No. 11—Acceptance of proceeds from an independently sponsored fundraising event for a Member's unrestricted personal use
- No. 12—Application and interpretation of House Rule XLIV (financial disclosure)
- No. 13—Interpretation of House Rule XLVII (outside earned income).

The Standards Committee also publishes the *House Ethics Manual*, 102–2, April 1992. Advisory opinions issued by the committee may be found in this publication. Advisory opinions Nos. 1–4 are published in Deschler Ch 12, Appendix. See also Historical Summary of Conduct Cases in the House of Representatives (Committee on Standards of Official Conduct, April 1992).

In accordance with the Ethics Reform Act of 1989, the committee has established an Office of Advice and Education, whose primary responsibility is to provide information and guidance to Members, officers, and employees regarding all standards of conduct which apply to them. § 803.

§ 5. Initiating an Investigation; Complaints

Generally

In addition to investigations directed by House resolution, called up as a question of the privileges of the House, an investigation of particular conduct also may be initiated by the Standards Committee, if approved by a majority vote of the members of that committee. An investigation may also be initiated pursuant to a complaint filed with the committee by a Member, or, where at least three Members have declined in writing to transmit a complaint, by an individual not a Member. Rule X clause 4(e)(2). *Manual* § 698. An investigation of particular conduct may also be initiated pursuant to House adoption of a resolution reported from the Committee on Rules (see, *e.g.,* H. Res. 608, Mar. 27, 1980, ABSCAM investigation). In 1988, a Mem-

ber introduced a resolution directing the Standards Committee to investigate a possible unauthorized disclosure of classified information by the Speaker in violation of House rules, which was referred to the Committee on Rules. 100–2, Sept. 30, 1988, p 27329.

Complaint Formalities; Unfounded Charges

Complaints filed with the committee must comply with the requirements of Rule X clause 4(e)(2)(B) and must be in writing and under oath. *Manual* § 698. Each complaint received by the committee is examined to determine whether it complies with that rule. Complaints that are not in compliance are returned. Those that comply with the rule are considered by the committee for appropriate disposition. See, for example, H. Rept. No. 99–1019.

A Member who has presented false charges against another Member has himself become the subject of a select committee investigation and report. In 1908, the House adopted a resolution approving a select committee report finding a Member in contempt and in violation of his obligations as a Member where he had presented false charges of corruption against another Member. 6 Cannon § 400.

Disclosure; Debate

The rules require a vote of the Standards Committee to authorize the public disclosure of the content of a complaint or the fact of its filing. Rule X clause 4(e)(2)(F). References in floor debate to the content of a complaint or the fact of its filing are governed by the rules of decorum in debate under Rule XIV clause 1. The mere fact that a complaint has been filed does not open up its allegations to debate on the floor. Members should refrain from references in debate to the ethical conduct of other Members where such conduct is not under consideration in the House by way of a report of the committee or a question of the privilege of the House. 100–2, July 6, 1988, p 16630; 101–2, July 24, 1990, p ____; 102–2, Mar. 19, 1992, p ____; 104–1, May 25, 1995, p ____. Members should also refrain from references in debate to the motivations of Members who file complaints before the Standards Committee. Debate may not include critical characterizations of members of the committee. 102–2, Apr. 1, 1992, p ____; 104–1, Mar. 3, 1995, p ____. In 1988, where several Members had improperly engaged in personalities during debate by references to the Speaker and to a Member who had filed a complaint regarding the Speaker's official conduct, the Chair announced to the House that Members should not engage in such debate. 100–2, June 15, 1988, p 14623.

§ 6. Persons Subject to Disciplinary Procedures

The investigative authority that is given under the rules to the Committee on Standards of Official Conduct over alleged violations extends to any ''Member, officer, or employee'' of the House. Rule X clause 4(e)(1). *Manual* § 698. Even the Speaker is subject to the investigative authority of this committee. Report of the Special Outside Counsel in the Matter of Speaker James C. Wright, Jr., Committee on Standards of Official Conduct, Feb. 21, 1989. A Delegate is as subject to censure for misconduct as any Member. 2 Hinds § 1305. With respect to violations by House officers or employees, the rules of the Standards Committee authorize it to recommend to the House dismissal from employment, fine, or any other sanction determined by the committee to be appropriate. Rule 20, Rules of Procedure, Committee on Standards of Official Conduct, 1993.

On one occasion, the House, by adopting a resolution presented as a question of privilege (dealing with the unauthorized disclosure of a House report), authorized the Committee on Standards of Official Conduct to investigate persons not associated with the House. The House considered it necessary to enlarge the subpena authority of the committee to carry out this investigation. H. Res. 1042, H. Res. 1054, 94th Cong. Private citizens have been censured or reprimanded by the Speaker at the bar of the House for attempting to bribe a Member (2 Hinds § 1606) or for assaulting a Member (2 Hinds §§ 1616–1619, 1625; 6 Cannon § 333).

B. Basis for Imposing Sanctions

§ 7. In General; The Code of Official Conduct

Generally

Prior to the 90th Congress, there was no House rule setting forth a formal code of conduct for Representatives. However, in 1968, the rules of the House were amended to establish, as new Rule XLIII, a Code of Official Conduct for Members and employees of the House. The code contains provisions governing the receipt of compensation, gifts, and honorariums, as well as the use of campaign funds; it proscribes discrimination in employment and bars certain ''non-House'' uses of House stationery. Rule XLIII, which was extensively amended by the Ethics Reform Act of 1989 and most recently by rules adopted in the 104th Congress (H. Res. 6, 104–1, Jan. 4, 1995, p ____). *Manual* § 939.

Conduct Reflecting Discredit on the House

Disciplinary measures may be invoked against a Member, officer, or employee on the ground that he has violated clause 1 of the Code of Official Conduct (Rule XLIII). It requires that they conduct themselves ''at all times'' in a manner that reflects ''creditably'' on the House. *Manual* § 939. In the 95th Congress, in connection with the Korean influence investigation, the Standards Committee recommended that disciplinary measures be taken against three Members for conduct that violated clause 1 of the Code. Included among the alleged statutory violations cited as a basis for invoking clause 1 were failure to report campaign contributions (H. Rept. No. 95–1742) and perjury (H. Rept. No. 95–1743). These three Members were officially reprimanded by the House in 1978. 95–2, Oct. 13, 1978, pp 36976, 37005, 37009.

Two years later, this general standard of clause 1 was again used as a basis for invoking several disciplinary proceedings. A Member of the 96th Congress was expelled by the House for his conviction by a jury on bribery charges. 96–2, Oct. 2, 1980, pp 28953 *et seq.* This action was based on the finding that he ''took money in return for promising to use [his] influence'' and that he thereby ''acted corruptly,'' in violation of law and clauses 1 through 3 of House Rule XLIII. H. Rept. No. 96–1387, *In re* Myers. See also H. Rept. No. 96–1537 (*In re* Jenrette). This was the first exercise of the power to expel in over a century.

A Member of the House was censured in the 96th Congress by a unanimous vote and was required to make restitution of monies in the amount which he had personally benefited in his misuse of the congressional clerk-hire allowance. 96–1, July 31, 1979, pp 21584 *et seq.* This was the first censure of a Member in over 50 years. The Standards Committee in recommending such discipline noted that the Member had admitted to misusing the clerk-hire allowance to his own unjust enrichment in violation of a House rule, and that such conduct reflected discredit on the House in violation of clause 1 of House Rule XLIII. In recommending censure, the Committee considered the Member's admission of guilt, his apology to the House, and his agreement to make restitution. H. Rept. No. 96–351, *In re* Diggs. See also H. Rept. No. 96–856, *In re* Flood; this case terminated with the Member's resignation.

In the 98th Congress, two Members were found to have engaged in sexual relationships with pages employed by the House. Again citing Rule XLIII clause 1, the committee recommended that both Members be reprimanded. H. Rept. No. 98–295, *In re* Studds; H. Rept. No. 98–296, *In re*

Crane. The House voted to censure, rather than reprimand, both Members. 98–1, July 20, 1983, pp 20030–37.

Adhering to the ''Spirit and Letter'' of the Rules

Clause 2 of the Code of Official Conduct provides that a Member, officer, or employee of the House must ''adhere to the spirit and the letter'' of the rules of the House and to the rules of its committees. Rule XLIII. *Manual* § 939. This rule has been interpreted to mean that a Member or employee may not do indirectly what the Member or employee would be barred from doing directly. See Advisory Opinion No. 4, Apr. 6, 1977, of the Select Committee on Ethics, 95th Cong. In 1988, the Standards Committee concluded that a Member's acceptance of an illegal gratuity on three occasions constituted actions which discredited the House as an institution in violation of House Rule XLIII clause 1, and, having violated the ''spirit'' of clause 1, he also violated House Rule XLIII clause 2. H. Rept. No. 100–506 (*In re* Biaggi). While purposeful violation of any rule of the House could potentially be considered an infraction under this clause of Rule XLIII, the Standards Committee has issued advisory opinions touching on some of the rules which specifically pertain to Members' conduct. In addition to the restrictions contained in the Code of Conduct, Rules XLIV (Financial Disclosure), XLV (Prohibition on Unofficial Office Accounts), XLVI (Limitations on Use of the Frank), XLVII (Limitations of Outside Employment and Earned Income) have been addressed by the committee in its Ethics Manual.

§ 8. Code of Ethics for Government Service

A Code of Ethics to be adhered to by all government employees, including office holders, was adopted by concurrent resolution in 1958. 72 Stat. pt. 2, B12, July 11, 1958. H. Con. Res. 175, 85–2. This code requires that any person in government service should, among other things, give a full day's labor for a full day's pay; never accept favors or benefits under circumstances which ''might be construed by reasonable persons as influencing the performance of his governmental duties;'' engage in no business with the government, either directly or indirectly, which is inconsistent with the conscientious performance of his governmental duties; and never use any information coming to him confidentially in the performance of governmental duties as a means of making a private profit.

The Standards Committee has indicated that the Code of Ethics is an expression of traditional standards of conduct which continues to be applicable, even though the code was enacted merely in the form of a concurrent

resolution. The Committee has pointed out that although the resolution may have expired with the adjournment of the Congress in which it was adopted, the principles of conduct for government officials expressed therein did not. H. Rept. No. 94–1364 (*In re* Sikes).

The ethical standards of this code have provided the basis for disciplinary proceedings against Members. See H. Rept. No. 100–506 (*In re* Biaggi). In one instance, charges concerning the use of a Member's official position for pecuniary gain were heard by the committee. The committee found that the Member had failed to report his ownership of certain stock, and that he bought stock in a bank following active efforts in his official capacity to obtain a charter for the bank. H. Rept. No. 94–1364 (*In re* Sikes). These charges resulted in a reprimand of the Member. 94–2, July 29, 1976, p 24380.

§ 9. Violations of Statutes

Generally

The Members of Congress, unless immunized by the Speech or Debate Clause of the Constitution (*Manual* § 93), are subject to the same penalties under the criminal laws as are all citizens. Deschler Ch 12 § 3. Indeed, the Members are specifically or impliedly referred to in a number of statutes which impose criminal or civil penalties for particular forms of misconduct, and the violation of such a statute may be considered by the Standards Committee in recommending disciplinary actions to the House. Thus, in 1988, a Member's conviction under 18 USC § 201g of accepting an illegal gratuity was cited as one of the grounds for the committee's recommendation that the Member be expelled. H. Rept. No. 100–506 (*In re* Biaggi).

Any disciplinary measure which the House invokes against a Member for violation of such a statute is separate and distinct from sanctions which may be sought by law enforcement authorities at the state or federal level. Criminal prosecution may precede or follow committee investigation or House censure for the same offense. See *U.S.* v *Diggs,* 613 F2d 788 (D.C. Cir. 1979), and 96–1, July 31, 1979, pp 21584–92. In this regard, the House rules authorize the Committee on Standards of Official Conduct to report to the appropriate federal or state authorities, with the approval of the House, any substantial evidence of a violation of an applicable law by a Member, officer, or employee of the House, which may have been disclosed in a committee investigation. Rule X clause 4(e)(1). *Manual* § 698.

Conviction as Basis for Committee Action

A rule of the Standards Committee provides that if a Member, officer, or employee is convicted of a criminal offense for which a sentence of at least one year may be imposed, the committee must conduct a preliminary inquiry to review the evidence of such offense and to determine whether it constitutes a violation over which the committee is given jurisdiction. If the committee determines that an offense was committed over which it has jurisdiction, the committee must hold a disciplinary hearing for the sole purpose of determining what action to recommend to the House respecting such offense. Comm. Rule 16, adopted in 1993.

The committee may review evidence presented at the Member's trial, including the trial transcript, transcripts of recorded phone conversations and oral intercepts. H. Rept. No. 100–506 (*In re* Biaggi).

In 1980, charges involving alleged bribes of Members of Congress (ABSCAM) led to investigations by both the Standards Committee and the Department of Justice. 96–2, Feb. 4, 1980, p 1611. The committee was authorized to conduct an inquiry into such alleged improper conduct, to coordinate its investigation with the Justice Department, to enter into agreements with the Justice Department, and to participate, by special counsel, in any judicial proceeding concerning or relating to the inquiry. 96–2, Mar. 27, 1980, pp 6995–6998 [H. Res. 608]. For a similar resolution on the same subject, see H. Res. 67, Mar. 4, 1981.

The ensuing disciplinary actions were based on bribery convictions or findings as to the receipt of money by a Member for exercising his influence in the House. These actions resulted in the expulsion of one Member (see H. Rept. No. 96–1387, *In re* Myers) and the initiation of disciplinary proceedings against other Members which were mooted because of their resignations. (See H. Rept. No. 96–856, *In re* Flood; H. Rept. No. 96–1537, *In re* Jenrette; H. Rept. No. 97–110, *In re* Lederer.)

In 1988, a Member's conviction under 18 USC § 201 of accepting an illegal gratuity, the Member having interceded to further the interests of a company doing business with the U.S. Navy, was cited as one of the grounds for the committee's recommendation that the Member be expelled. H. Rept. No. 100–506 (*In re* Biaggi).

§ 10. Misuse of Hiring Allowance; False Claims

The House rules prohibit a Member from retaining anyone under his payroll authority who does not perform duties commensurate with the compensation he receives. Rule XLIII clause 8, as amended by the Ethics Reform Act of 1989, § 802. Closely related to this rule is the False Claims

Act (31 USC § 3729) which imposes liability on persons making claims against the government knowing such claims to be false or fraudulent. See also 18 USC § 287 (criminal penalties for false claims). Because a Member must formally authorize salary payments to his aides, he may be found to have violated federal law if he knows that such payments are being made to an aide who is not doing official work commensurate with such pay, or if he is drawing on clerk-hire funds to meet his own personal or congressional expenses. See *U.S.* v *Diggs*, 613 F2d 988 (D.C. Cir. 1979), cert. denied, 446 U.S. 982 (1980). The False Claims Act is applicable where a Member submits false travel vouchers to the Clerk of the House. See *U.S. ex rel. Hollander* v *Clay*, 420 F Supp 853 (D.D.C. 1976). Liability under the Act likewise arises where a Member has falsely certified certain long distance phone calls as being official calls in order to obtain reimbursement for them. *U.S.* v *Eilberg*, 507 F Supp 267 (E.D.Pa. 1980).

§ 11. Discrimination in Employment

Clause 9 of the Code of Official Conduct contains provisions barring discrimination against any individual with respect to compensation or other conditions of employment because of such individual's race, color, religion, sex, handicap, age, or national origin. Rule XLIII. *Manual* § 939. The Standards Committee has concluded that sexual harassment is a form of discrimination in employment that is prohibited by clause 9, and in one case it issued a letter of reproval to a Member for his conduct in interacting with two female employees on his staff. H. Rept. No. 101–293, 1989 (*In re* Bates).

In 1993, the House adopted Rule LI, reiterating the prohibition in clause 9 against discrimination in employment practices and establishing grievance procedures for consideration of alleged violations. Such procedures include (1) counseling and mediation; (2) formal complaint, hearing, and review by an Office of Fair Employment Practices; and (3) final review by a Review Panel. *Manual* § 946a.

§ 12. Campaign Fund Irregularities

Members of the House are governed by many restrictions and regulations concerning the use of campaign funds, and must comply with various campaign finance procedures. These requirements are found primarily in the Federal Election Campaign Act of 1971. 2 USC §§ 431 *et seq.* Under this statute, the Federal Election Commission has been established as an independent regulatory agency with jurisdiction over federal campaign finance practices. 2 USC §§ 437c–438.

The House rules require that Members use campaign funds solely for campaign purposes, and specifically prohibit the use of campaign funds for personal use. The rules also provide that any proceeds from testimonials or other fund-raising events are to be treated by Members as campaign contributions. Members must keep campaign funds separate from personal funds and they may not convert campaign funds to personal use except for reimbursement for legitimate, verifiable prior campaign expenses, and may not expend campaign funds for other than *bona fide* campaign or political purposes. Rule XLIII clauses 6, 7. While compaign funds may be invested, when a candidate borrows money from his own campaign a presumption is raised that he is receiving a personal benefit—*i.e.,* the use of the money. The committee has taken the position that any use of campaign funds which personally benefits the Member rather than exclusively and solely benefiting the campaign is not a ''bona fide campaign purpose.'' H. Rept. No. 99–933; H. Rept. No. 100–526.

On several occasions in the 1980's, the Committee on Standards of Official Conduct investigated Members for transferring campaign funds to personal accounts or borrowing from their campaign funds. The committee found violations of Rule XLIII clause 6 in each case, and issued separate reports condemning the practice. See for example H. Rept. No. 96–930, 96th Cong. 2d Sess. (1980); H. Rept. No. 99–933, 99th Cong. 2d Sess. (1986).

In the 95th Congress, the House adopted a report (H. Rept. No. 95–1742) of the Standards Committee recommending the reprimand of a Member for his failure to report a campaign contribution. 95–2, Oct. 13, 1978, p 37005 (McFall). Another Member was reprimanded in the same Congress on the basis of a report of the committee (H. Rept. No. 95–1743) finding that he had (1) received a campaign contribution and failed to report it as required by law, (2) converted a campaign contribution to personal use, and (3) testified falsely to the committee under oath. 95–2, Oct. 13, 1978, p 37009 (Roybal).

§ 13. Solicitation of Contributions From Government Employees

A federal statute prohibits Members of Congress (and candidates for Congress) from soliciting political contributions from employees of the House as well as other federal government employees. 18 USC § 602. Under this statute, it must actually be known that the person who is being solicited is a federal employee. Inadvertent solicitations to persons on a mailing list during a general fund-raising campaign are not prohibited. H. Rept. No. 96–422. Since the statute by its terms is directed at protecting ''employees'' it does not prevent one Member from soliciting another Member. See 6 Can-

non § 401 (in which the House adopted a resolution construing the predecessor statute).

In 1985, the Standards Committee initiated a preliminary investigation into charges that a ''Dear Colleague'' letter had been used to solicit Members' staffs in House office buildings. However, the committee took the view that the statute was directed against coercive activities—that is, political ''shakedowns''—and concluded that, in the absence of any evidence of ''victimization''—*i.e.,* coercion of congressional staff—the solicitations were not precluded by that law. H. Rept. No. 99–177. The committee concluded, however, that neither staff (paid or volunteer) while on official time, nor federal office space at any time, should be used to prepare or distribute material involving solicitations of political contributions. See also H. Rept. No. 99–1019.

§ 14. Limitations on Earned Income; Honoraria

A House rule places restrictions upon the amount of outside-earned income a Member or officer or employee may receive. This provision limits the amount of aggregate outside-earned income in a calendar year to a certain percentage of one's yearly congressional salary. Rule XLVII clause 1. Excluded from this limitation is income from certain sources, such as royalties from established publishers. Clause 3(e). The limitation applies to earned income for personal services, rather than monies that are essentially a return on equity; in this regard, the facts of a particular case will be regarded as controlling, and not how such monies are characterized. Advisory Opinion No. 13, House Select Committee on Ethics, 95th Cong.

A restriction against honoraria is imposed by Rule XLIII clause 5 and Rule XLVII clause 1. In 1989, special outside counsel concluded that Speaker Wright had retained excessive honoraria and other outside income, styled as ''royalties,'' which he accepted from special interest groups from the sale of his book. Report of the Special Outside Counsel in the Matter of Speaker James C. Wright, Jr., Committee on Standards of Official Conduct, Feb. 21, 1989, p 3. In 1995, Rule XLVII was amended by adding a new clause 3 to restrict advance payment on copyright royalties and requiring advance Standards Committee approval of usual and customary contractual terms (H. Res. 299, Dec. 22, 1995).

§ 15. Acceptance of Gifts

The House rules have included a gift ban since 1968. In 1995, the House adopted new Rule LII, which bars the acceptance of all gifts except those expressly permitted by the rule. (See H. Res. 250, Nov. 16, 1995, p

____.) The House Standards Committee in the 96th Congress recommended that the House censure a Member for misconduct which included the acceptance of gifts of money from a person with a ''direct interest in legislation'' before Congress. The committee determined that certain checks which had been marked ''loans'' were not in fact true loans. H. Rept. No. 96–930, *In re* Wilson. On the basis of this and other violations, the House, after rejecting a motion to recommit that would have permitted a reprimand, voted to censure. 96–2, June 10, 1980, pp 13801–20. In 1988, the committee concluded that a Member's acceptance of illegal gratuities in trips to St. Maarten and Florida established *per se* violations of the gift rule since those events, both individually and in the aggregate, far exceeded the $100 limit then imposed by Rule XLIII clause 4. H. Rept. No. 100–506 (*In re* Biaggi).

In 1977, the Standards Committee was empowered to investigate the alleged receipt by Members of ''things of value'' from the Korean government. 95–1, Feb. 9, 1977, pp 3966–68. Subsequently, the House adopted a committee report (H. Rept. No. 95–1741), recommending the reprimand of a Member on the basis of the committee's finding that he had failed to disclose, in a questionnaire sent to all Members by the committee, his receipt of currency and valuables worth more than $100 from representatives of Korea. 95–2, Oct. 13, 1978, p 36976 [H. Res. 1414, *In re* Wilson].

§ 16. Financial Disclosure

Title I of the Ethics in Government Act of 1978 (EIGA) requires Members, officers, and certain employees of the House to file an annual Financial Disclosure Statement. 5 USC App 6 §§ 101–111. This law, which is incorporated into House Rule XLIV (*Manual* § 940), was intended to regulate and monitor possible conflicts of interest due to outside financial holdings. H. Doc. No. 95–73 (1977), Commission on Administrative Review, pp 9 *et seq.*

The House has had a disclosure rule since 1968. In the 94th Congress, the House reprimanded a Member for certain conduct occurring during prior Congresses which included failure to make proper financial disclosures. 94–2, July 29, 1976, p 34380 (Sikes). In 1988, the House Standards Committee concluded that a Member had accepted certain gifts that were subject to mandatory disclosure under EIGA. H. Rept. No. 100–506 (*In re* Biaggi).

§ 17. Professional Practice Restrictions

Members are subject to various restrictions relating to their professional affiliations while serving in the House. Thus, Members are prohibited from receiving compensation for legal services before agencies of the federal gov-

ernment. 18 USC § 205. See also House Rule XLVII clause 2. Under this rule, Members, officers, and certain senior employees may not:

- Receive compensation from affiliation with a firm providing professional services for compensation which involve a fiduciary relationship.
- Permit their name to be used by any such firm or other entity.
- Practice a profession for compensation which involves a fiduciary relationship.
- Serve for compensation on the board of directors of any association, corporation, or other entity.
- Receive compensation for teaching without prior notification and approval.

§ 18. Acts Committed in Prior Congress or Before Becoming a Member

The Ethics Reform Act of 1989 amended Rule X clause 4(e)(2)(C) to establish a general time limitation on investigations by the Standards Committee. The committee may not, under this Act, investigate allegations of ethics violations occurring before the third previous Congress unless it determines that such matters are directly related to an alleged violation which occurred in a more recent Congress. See *Manual* § 698. This provision took effect Jan. 1, 1990.

Historically, it has been within the prerogative of the House to censure a Member for misconduct occurring in a prior Congress notwithstanding his reelection (Deschler Ch 12 § 16). However, the question of whether the offense was known to his constituency at the time of his election is a factor to be considered. 2 Hinds § 1286. Thus, in 1976, the Standards Committee recommended that a Member be reprimanded for certain conduct occurring during prior Congresses which involved financial irregularities, but declined to recommend punishment for prior conflict-of-interest conduct which had occurred in 1961, where such conduct had apparently been known to a constituency which had continually reelected him. H. Rept. No. 94–1364. This report was subsequently adopted by the House. 94–2, July 29, 1976, p 24380.

The House has jurisdiction under art. I § 5 of the Constitution to inquire into the misconduct of a Member occurring prior to his last election and to impose at least those sanctions falling short of expulsion. H. Rept. No. 96–351 (*In re* Diggs). (Compare 2 Hinds § 1283.) Expulsion, on the other hand, thus far has been applied to Members only with respect to offenses occurring during their terms of office and not to action taken by them prior to their election. Deschler Ch 12 § 13. A resolution calling for the expulsion of a Member was reported adversely by the Standards Committee, where the Member had been convicted of bribery under California law for acts occur-

ring while he served as a county tax assessor and before his election to the House; the committee found that although the conviction related to the Member's moral turpitude, it did not relate to his official conduct while a Member of Congress. H. Rept. No. 94–1478, *In re* Hinshaw.

If a Member's term of office expires before a pending resolution of expulsion against him can be agreed to, the proceedings are discontinued. 2 Hinds § 1276.

C. Nature and Forms of Disciplinary Measures

§ 19. In General

Kinds of Disciplinary Measures

The primary disciplinary measures that may be invoked by the House against a Member include expulsion, censure or reprimand, fines or other economic sanctions, and deprivation of seniority or committee status.

Reprimand is appropriate for serious violations, censure is appropriate for more serious violations, and expulsion of a Member is appropriate for the most serious violations. Rule 20, Committee on Standards of Official Conduct, Rules of Procedure (1993).

Generally, the type of disciplinary measure invoked will depend on the nature of the offense charged. Where there are mitigating circumstances, the Standards Committee sometimes issues a public ''letter of reproval.'' See, for example, H. Rept. No. 100–526 (*In re* Rose). This letter may include a direction to the Member that he apologize. See H. Rept. No. 101–293 (*In re* Bates). The House itself may exact an apology from the offending Member. 2 Hinds §§ 1650, 1657.

Effect of Court Conviction or Pendency of Judicial Proceedings

Under the former practice, where a Member had been convicted of a crime, the House would defer taking disciplinary action until the judicial processes had been exhausted. 6 Cannon § 238. Under the more recent practice, the House may choose—as it did in the 96th Congress—to initiate disciplinary proceedings against a Member for conduct even when that Member has not exhausted all of his appeals in the criminal process. H. Rept. No. 96–351 (*In re* Diggs). While a court conviction may be appealed, such a course of action and its outcome have no bearing on either the timing or the nature of the decision reached by the House. H. Rept. No. 100–506 (*In re* Biaggi).

The House rules provide that a Member who is convicted of a crime for which sentence could be two or more years imprisonment should refrain

from committee business and from voting in the House until judicial or executive proceedings reinstate the Member's presumption of innocence, or until he is reelected to the House after his conviction. Rule XLIII clause 10.

Resolutions and Reports

A resolution proposing disciplinary action against a Member may be called up in the House as a question of high privilege. 2 Hinds § 1254; 3 Hinds §§ 2648–2651; 96–1, Mar. 1, 1979, pp 3746–53. Where the Standards Committee after investigation recommends that disciplinary action be taken against a Member, it normally files a privileged report with the resolution proposing the action. But where the committee dismisses the charges or issues a lesser sanction such as a letter of reproval, the committee files its report, for the information of the House, without an accompanying resolution. 95–2, Oct. 6, 1978, p 34145.

Under amendments to Rule X clause 4 by the Ethics Reform Act of 1989, any letter of reproval or other administrative action of the committee may be implemented only as a part of its report to the House. The rule also requires that the committee report to the House on the final disposition of any case it has voted to investigate. See *Manual* § 698.

A resolution adopting the committee report may be offered:

> *Resolved*, That the House of Representatives adopt the report by the Committee on Standards of Official Conduct dated _____ in the matter of Representative _____.

Consideration and Debate

The Ethics Reform Act of 1989 amended Rule XXXII clause 1 to permit an accused Member to be accompanied by counsel on the floor of the House when the committee's recommendation on his case is under consideration by the House. *Manual* § 919.

Debate on a disciplinary resolution is permitted under the hour rule. 94–2, July 29, 1976, p 24382. Under the rules adopted in the 103d Congress, debate on questions of privilege (including disciplinary resolutions) offered from the floor is equally divided between the proponent and a party leader, as determined by the Speaker (Rule IX clause 2). While a wide range of discussion is permitted during the debate on the resolution as to the Member's alleged misconduct, language which is personally abusive is not permitted (96–1, July 31, 1979, p 21584), and may not extend to the conduct or criminal convictions of other Members or former Members. 95–2, Oct. 13, 1978, p 36976. Debate is confined in scope to the conduct of the accused. 100–1, Dec. 18, 1987, p 36271.

Since an accurate record of disciplinary proceedings is important, the House may agree by unanimous consent to ban revisions or extensions of remarks delivered during the floor debate. 96–2, May 29, 1980, pp 12661, 12662.

It is for the House and not the Speaker to judge the conduct of Members. It is, accordingly, not a proper parliamentary inquiry to ask the Chair to interpret the application of a criminal statute to a Member's conduct. 100–1, Nov. 17, 1987, p 32153.

Effect of Resignation

The resignation of a Member at a time when expulsion proceedings against him are pending generally results in the suspension or discontinuance of the proceedings. 2 Hinds § 1275; 6 Cannon § 238. Similarly, where a Member resigns after a committee of investigation has found him guilty of improper conduct and deserving of censure, the House may discontinue the proceeding. 6 Cannon § 398. But the House may adopt a resolution censuring his conduct even after his resignation has been submitted. 2 Hinds §§ 1239, 1273, 1275.

§ 20. Expulsion

The House has the power under the Constitution to expel a Member by a two-thirds vote. U.S. Const. art. I § 5 clause 2. The power to expel extends to all cases where the offense is such as to be inconsistent with the trust and duty of the Member. *In re* Chapman, 166 US 661, 669 (1897). Indeed, the discretionary power of the House to expel one of its Members has been said to be unlimited. 6 Cannon § 78. However, the House has consistently refused to expel a Member for acts unrelated to him as a Member or to his public trust and duty. H. Rept. No. 56–85 (1899); see also 1 Hinds § 476. In 1976, an expulsion resolution was reported adversely where a Member had been convicted of bribery under state law for acts occurring before his election to the House, since the conviction did not relate to his official conduct while a Member of Congress. Deschler Ch 12 § 13.1.

The purpose of expulsion is not merely to provide punishment, but to remove a Member whose character and conduct show that he is unfit to participate in the deliberations and decisions of the House, and whose presence in it tends to bring that body into contempt and disgrace. 2 Hinds § 1286. The fundamental governing consideration underlying expulsion proceedings is whether the individual charged has displayed conduct inconsistent with the trust and duty of a Member. *In re* Chapman, 166 US 661, 669 (1897).

The House has considered proposals to expel on many occasions. Expulsion was used during the Civil War against Members charged with being

in rebellion against the United States or with having taken up arms against it. 2 Hinds §§ 1261, 1262. In a more recent instance, the House expelled a Member who had been convicted in a federal court of bribery and conspiracy in accepting funds to perform official duties (H. Rept. No. 96–1387). 96–2, Oct. 2, 1980, pp 28953–78. And in 1988 the Standards Committee recommended the expulsion of a Member who had accepted an illegal gratuity, engaged in illegal trafficking, obstructed justice, brought discredit on the House, accepted impermissible gifts from a person or organization with an interest in legislation, failed to disclose gifts of $250 or more in a calendar year on annual financial disclosure statements, and accepted favors or benefits under circumstances which might be construed as influencing the performance of governmental duties. H. Rept. No. 100–506 (*In re* Biaggi). The case terminated with the Member's resignation.

There have been many instances in which an expulsion proposal being considered in the House has failed, either because it was not supported by a two-thirds vote or because the House preferred some lesser penalty, such as reprimand. This has occurred where a Member was charged with:

- Publishing an article alleged to be in violation of the privileges of the House. 2 Hinds § 1245.
- Abuse of the leave to print. 1 Cannon § 236.
- Involvement in an affray on the floor of the House. 2 Hinds § 1643.
- Assaulting a Senator. 2 Hinds § 1621.
- Uttering words alleged to be treasonable. 2 Hinds §§ 1253, 1254.
- Accepting money for appointing a person to the military academy. 2 Hinds § 1274.
- Attempting to bribe Members of Congress by offering them shares of stock at sums below their actual value. 2 Hinds § 1286 (the Credit Mobilier case).
- Assaulting another Member for words spoken in debate. 2 Hinds § 1656.
- Using offensive language on the floor and deceiving the Speaker when the latter had attempted to control the debate. 2 Hinds § 1251.

In a case in the House in 1981, arising from the ABSCAM investigation, the Standards Committee recommended to the House that a Member be expelled after he had been found guilty on all counts of an indictment charging bribery, conspiracy, and accepting an illegal gratuity under Title 18, U.S. Code. The committee also found violations of House Rule XLIII clauses 1, 2, and 3. H. Rept. No. 97–110 (Lederer). The Member resigned from the House within a week of the vote of the committee.

Expulsion proceedings against Senators have been initiated in the Senate pursuant to recommendations of the Senate Committee on Ethics. See S. Rept. No. 97–187 (1981). See also 104–2, Sept. 7, 1995, p ____. In both instances, the Senator resigned prior to a vote of the full Senate.

§ 21. — Procedure; Resolutions of Expulsion

Generally; Form

Expulsion proceedings may be initiated by the introduction of a resolution containing explicit charges (2 Hinds §§ 1254, 1261, 1262), as follows:

> *Whereas*, the Hon. _____, a Member of the House of Representatives from the State of _____, has, upon this day _____: Therefore, be it
>
> *Resolved*, That the said _____, be, and he hereby is, expelled from this House.

Under more recent practice allegations of misconduct have not been included in the resolution as reported from the Standards Committee (H. Res. 794, 96th Cong.):

> *Resolved*, That pursuant to article I, Section 5, clause 2 of the United States Constitution, Representative_____, be, and he hereby is, expelled from the House of Representatives.

The resolution should be limited in its application to one Member only, although several may be involved. Separate resolutions should be prepared on each Member. Deschler Ch 12 § 13.

A resolution proposing expulsion may provide for a committee to investigate and report on the matter. Referral of such a resolution is normally made to the Committee on Standards of Official Conduct. Deschler Ch 12 § 13. The resolution is subject to the motion to lay on the table. 94–2, Oct. 1, 1976, p 35111.

A resolution to expel a Member presents a question of the privileges of the House (96–1, July 30, 1979, pp 21297, 21298), and may be called up by any Member as privileged under the Constitution and under Rule IX whether or not it has been reported favorably or adversely from committee. 94–2, Oct. 1, 1976, p 35111. Being privileged, the proposition supersedes the regular order of business. 2 Hinds § 2648.

As already noted, the resolution of expulsion must be agreed to by a two-thirds vote under the Constitution. An amendment proposing expulsion may be agreed to by a majority vote, but on the proposition as amended a two-thirds vote is required. 2 Hinds § 1274. In this regard, it was held in 1921 that a motion to censure was not germane to the motion to expel. The amendment proposing censure rather than expulsion having been ruled out as not germane, the House then rejected the motion to expel, not mustering the required two-thirds majority. The proposition to censure was then offered as a question of privilege from the floor and was agreed to. 6 Cannon § 236. Compare 5 Hinds § 5923.

Debate; Right of Member To Be Heard

Floor debate on a resolution of expulsion is under the hour rule. 8 Cannon § 2448. In one recent instance, during debate on an expulsion resolution, the Member charged was yielded one-half of the hour in which to speak or yield in his behalf. 96–2, Oct. 2, 1980, pp 28953–78 (Myers). A Member whose expulsion is proposed may be permitted to present a written defense. 2 Hinds § 1273.

§ 22. Censure; Reprimand

Generally

Censure and reprimand are two forms of discipline that may be administered pursuant to that provision of the Constitution (art. I § 5 clause 2) empowering the House to punish a Member for disorderly behavior. *Manual* § 63. These punitive measures are ordered in the House by a majority of those voting, a quorum being present. The House itself must order the sanction. The Speaker cannot on his own authority censure a Member. Deschler Ch 12 § 16.

During its history, the House has censured or reprimanded numerous Members or Delegates. The House has on occasion made a distinction between censure and reprimand, the latter being a somewhat lesser punitive measure than censure. A censure is administered by the Speaker to the Member at the bar of the House, perhaps in a manner specified in the resolution, as by the reading of the censure resolution (96–1, July 31, 1979, p 21592; 96–2, June 10, 1980, p 13820), whereas a reprimand is administered to the Member ''standing in his place'' or merely by the adoption of a committee report. Deschler Ch 12 § 16.

If necessary, the Member to be censured may be arrested and brought to the bar for the Speaker's pronouncement. 2 Hinds §§ 1251, 1305. The censure appears in full in the Journal. 2 Hinds §§ 1251, 1656; 6 Cannon § 236. In rare instances, the House has reconsidered a vote of censure (2 Hinds § 1653) or expunged a censure from the Journals of a preceding Congress (4 Hinds §§ 2792, 2793).

§ 23. — Grounds; Particular Conduct

The conduct for which censure may be imposed is not limited to acts relating to the Member's official duties. The power to censure extends to any reprehensible conduct which brings the House into disrepute. Deschler Ch 12 § 16.

Many early cases of censure involved the use of unparliamentary language, assaults on a Member, or insults to the House by the introduction of offensive resolutions. See 2 Hinds §§ 1246–1249, 1251, 1256, 1305, 1621, 1656. During the Civil War, some Members, whose sympathies lay with the Confederacy, were censured for uttering treasonable words. 2 Hinds §§ 1252–1254. Censure was also invoked on the basis of evidence of corrupt acts by a Member. 2 Hinds §§ 1239, 1273, 1274, 1286; 6 Cannon § 239.

More recent cases have seen censure or reprimand invoked against a Member for:

- Ignoring the processes and authority of the New York State courts, and improper use of government funds. H. Rept. No. 90–27; Deschler Ch 12 § 16.1 (Powell). Censure recommendation rejected in favor of other penalties. § 1, supra.
- Failing to report certain financial holdings in violation of Rule XLIII, the Code of Official Conduct, and for investing in stock in a bank, the establishment of which he was promoting, in violation of the Code of Ethics for Government Service. H. Rept. No. 94–1364; recommendation of reprimand approved, 94–2, July 29, 1976, pp 24379–82 (Sikes).
- Receiving a campaign contribution and failing to report it as required by law. H. Rept. No. 95–1742; Member reprimanded, 95–2, Oct. 13, 1978, p 37005 (McFall).
- Receiving a campaign contribution and failing to report it, converting a campaign contribution to personal use, and testifying falsely to the committee under oath. H. Rept. No. 95–1743; Member reprimanded, 95–2, Oct. 13, 1978, p 37009 (Roybal).
- Unjust enrichment through increasing an office employee's salary. H. Rept. No. 96–351; censure approved, 96–1, July 31, 1979, pp 21584–92 (Diggs).
- Receiving money from a person with direct interest in legislation in violation of clause 4, Rule XLIII, and for transferring campaign funds into office and personal accounts. H. Rept. No. 96–930; censure approved, 96–2, June 10, 1980, p 13820 (Wilson).
- Sexual misconduct with a page. H. Rept. No. 98–295 (*In re* Studds); H. Rept. No. 98–296 (*In re* Crane); Members censured, 98–1, July 20, 1983, pp 20020, 20030.
- Filing false financial disclosure statements under the Ethics in Government Act. H. Rept. No. 98–891 (*In re* Hansen); reprimand approved, 98–2, July 31, 1984, pp 21650, 21652.
- ''Ghost voting,'' improperly diverting government resources, and maintaining a ''ghost employee'' on his staff. H. Rept. No. 100–485 (*In re* Murphy). Member reprimanded, 100–1, Dec. 18, 1987, p 36266.
- Seeking improper dismissal of parking tickets and for misstatements of fact in a memorandum relating to an associate's criminal probation record. H. Rept. No. 101–610 (*In re* Frank). Member reprimanded, 101–2, July 26, 1990, p ____.

The power of censure has also been invoked in the Senate. Deschler Ch 12 § 16. In recent years, the Senate has censured or denounced one of its Members for:

- Noncooperation with and abuse of certain Senate committees during an investigation of his conduct. 83–2, Dec. 2, 1954, p 16392 (Joseph McCarthy). See also Deschler Ch 12 § 16.2.
- Exercising the power and influence of his office to obtain and use for his personal benefit funds from the public raised through political testimonials. 90–1, June 23, 1967, p 17005–20 (Dodd). See also Deschler Ch 12 § 16.3.
- Acts and omissions regarding unsigned vouchers for the use of Senate funds, inaccurate financial disclosure statements, and unreported campaign funds and receipts. 96–1, Oct. 11, 1979, p 27767 (Talmadge).

§ 24. — Censure Resolutions

Generally

The censure of a Member is imposed pursuant to a resolution adopted by the House. Deschler Ch 12 § 16. The resolution may take the following form (from 2 Hinds § 1259):

> *Resolved*, That the Member from _____, Mr. _____, in _____ has been guilty of a violation of the rules and privileges of the House and merits the censure of the House for the same.
>
> *Resolved*, That said _____ be now brought to the bar of the House by the Sergeant at Arms, and the censure of the House be administered there by the Speaker.

The resolution may call for direct and immediate action by the House. Deschler Ch 12 § 16. Such a resolution should be drafted so as to apply to only one Member, although two or more Members may be involved. 2 Hinds §§ 1240, 1621.

A resolution of censure presents a question of privilege (3 Hinds §§ 2649–2651) and may be entertained as privileged (6 Cannon § 239). The Speaker may recognize a Member to offer a resolution of censure after the question on agreeing to a resolution calling for expulsion has been decided adversely. 6 Cannon § 236. The House may amend a resolution of censure to provide for other action to be taken against the Member and then adopt the resolution as amended. Deschler Ch 12 § 16.1. A resolution reported from committee may be adopted with an amendment converting the resolution from one of censure to one of reprimand. 95–2, Oct. 13, 1978, p 37009.

Debate

Floor debate on a resolution of censure is under the hour rule. 94–2, July 29, 1976, p 24382; 96–1, July 31, 1979, pp 21584–92. In the 103d

Congress, Rule IX was amended to equally divide debate on any question of privilege offered from the floor between the proponent and a party leader as determined by the Speaker. Rule IX clause 2.

A Member controlling debate under the hour rule may yield time to the Member being charged. 94–2, July 29, 1976, p 24382. That Member may, after declining to speak, yield all of his time to another Member. 96–1, July 31, 1979, pp 21584–92. It has been held, however, that if the previous question is moved on the proposition to censure, the effect may be to prevent him from making an explanation or defense (5 Hinds § 5459) and once the House has voted to censure, it is then too late for the Member to be heard. 2 Hinds § 1259.

Effect of Apologies or Explanations

In situations involving censure for unparliamentary language or behavior, the House may accept an apology or explanation from the Member and terminate the proceedings. 2 Hinds §§ 1250, 1257, 1258, 1652. The resolution of censure may be withdrawn (2 Hinds § 1250), or, if the House has already voted to censure, it may reconsider its vote and decide against censure (2 Hinds § 1653).

§ 25. Fines; Restitution of Funds

Pursuant to its constitutional authority to punish its Members (U.S. Const. art. I § 5 clause 2), the House may levy a fine as a disciplinary measure against a Member for certain misconduct. Deschler Ch 12 § 17. The fine may be coupled with certain other disciplinary measures deemed appropriate by the House. Thus, in one instance, the House disciplined a Member (for improper expenditure of House funds for private purposes) by imposing a fine of $25,000, to be deducted on a monthly basis from his salary. 91–1, Jan. 3, 1969, pp 29, 34. In another instance, in the 96th Congress, a Member was required to make restitution of monies in the amount which he had personally benefited in his misuse of the congressional clerk-hire allowance. 96–1, July 31, 1979, pp 21584–92. Fines imposed by the House are separate and distinct from those for which a Member might be liable under federal law.

§ 26. Deprivation of Status; Caucus Rules

Deprivation of seniority status is a form of disciplinary action that may be invoked by the House against a Member under the U.S. Constitution (art. I § 5 clause 2). Thus, among the sanctions imposed by the House against a Member (Adam Clayton Powell) was a reduction in seniority to that of

a first-term Congressman. Deschler Ch 12 § 18.2. A Member also may be reduced in committee seniority as a result of party discipline enforced through the machinery of his party caucus. Deschler Ch 12 § 18.1.

The chairman of a committee of the House may be subjected to a variety of disciplinary measures for misconduct in his capacity as chairman, including removal from office. In one instance, a party caucus removed a Member from his office as chairman of a committee based on a report disclosing certain improprieties concerning his travel expenses and in clerk-hiring practices. Deschler Ch 12 § 9.2. Where consistent with the House rules, the members of a committee may take action against its chairman by restricting his authority to appoint special subcommittees (Deschler Ch 12 § 12.4) or transfer authority from the chairman to the membership and the subcommittee chairmen (Deschler Ch 12 § 12.3). The House through the adoption of a resolution may restrict the power of the chairman to provide for funds for investigations by subcommittees. Deschler Ch 12 § 12.2.

Step-aside Rules

The party caucus or conference rules may require that the chairman or ranking minority member step aside from those positions upon indictment or on conviction of a felony. In the 104th Congress, for example, Rule 50 of the Democratic Caucus rules specified that if the senior Democratic member on a committee is indicted for a felony punishable by confinement for two or more years, he must step aside in favor of the next ranking member. In the same Congress, Rules 25, 26 and 27 of the Republican Conference also addressed similar situations.

Morning Hour

Research References

4 Hinds §§ 3118–3141
6 Cannon §§ 751–755
7 Cannon § 944
6 Deschler Ch 21 § 4
Manual §§ 878, 889

§ 1. In General; Place in Order of Business

Generally

The morning hour call of committees is a rarely used procedure for calling up for consideration in the House bills that have been reported by committees and which are on the House Calendar. Rule XXIV clause 4 (adopted in its present form in 1890). *Manual* § 889. Other avenues that are more frequently used for this purpose are special rules from the Committee on Rules, suspension of the rules, and unanimous-consent agreements (all of which are discussed are under separate titles in this work). Because of the availability of these more effective procedures, and because most reported bills are referred to the Union Calendar, the morning hour call has become largely obsolete. See Deschler Ch 21 § 4. However, since the demise of the Consent Calendar in the 104th Congress, the morning hour remains an alternative to suspensions as a way of reaching relative noncontroversial bills on the House Calendar.

Morning-hour Debates Distinguished

Beginning in the 103d Congress, the House established a procedure for ''morning-hour speeches.'' *Manual* § 753b. Under this new practice, which is permitted by a standing order adopted by unanimous consent, the House meets early on Mondays and Tuesdays, before the regular convening hour, to entertain five-minute speeches. No business is permitted during such periods. See CONSIDERATION AND DEBATE for further discussion of this practice.

Calendar Wednesday Distinguished

Bills on the House Calendar (as well as those on the Union Calendar) may be considered when committees are called under the Calendar Wednesday rule (Rule XXIV clause 7). Both the morning hour and Wednesday calls have seen little use in recent Congresses since reported bills are routinely given privilege by special orders reported from the Committee on Rules. However, while the morning hour call of committees can be ignored whenever a majority of the House so chooses, it takes a two-thirds vote to dispense with the call on Wednesdays. *Manual* § 897; see also CALENDAR WEDNESDAY.

Order of Morning Hour Business; Precedence

The morning hour is listed seventh in the rule governing the order of business in the House, coming just after ''unfinished business.'' Rule XXIV clause 1. A bill once brought up on the morning hour call continues before the House in that order of business until disposed of (4 Hinds § 3120), unless withdrawn by authority of the committee with jurisdiction over the bill. Such withdrawal must occur before amendment or other House action on the bill. 4 Hinds § 3129. Once consideration of the bill has begun under the morning hour rule, the House may not on motion postpone its further consideration to a day certain. 4 Hinds § 3164. However, other more highly privileged matters, such as a privileged report from the Committee on Rules, may intervene. 4 Hinds § 3131.

§ 2. Procedure; Business Considered

Generally

The morning hour rule provides that after the disposition of unfinished business, the Speaker is to call each standing committee, ''in regular order,'' and then select committees. Rule XXIV clause 4. This rule is interpreted to mean that committees are to be called seriatim in the order in which they are listed in Rule X. 6 Cannon § 751. Each committee when named may then call up a bill it has previously reported which is on the House Calendar. Rule XXIV clause 4. Bills called up under this procedure are debated under the hour rule, with debate being confined to the bill under consideration. Deschler Ch 21 § 4.2.

Business Considered During the Morning Hour

In the early practice, the morning hour was used for the reception of reports from committees. 4 Hinds § 3118. In 1890, the rule was amended so as to devote the morning hour to ''any bill'' reported by a committee

''on a previous day'' and which is on the House Calendar. *Manual* § 889. Thus, the bill must actually be on the House Calendar, and properly there, in order to be considered (4 Hinds §§ 3122–3126); a bill on the Union Calendar may not be brought up during the morning hour call of committees. 6 Cannon § 753.

Committee Authorization

A Member calling up a bill under the morning hour rule must be authorized to do so by the committee reporting the bill. Deschler Ch 21 § 4.2. In the event of a dispute as to whether committee authorization was in fact granted, the Speaker may decline to resolve the matter on the ground that such an issue gives rise to a question of fact to be resolved by the committee. 4 Hinds § 3127. But he may rule on the question of authorization based on statements by the chairman and other members of the reporting committee. 4 Hinds § 3128.

§ 3. Duration; Interruption or Termination

Generally

The term ''morning hour'' is to some extent misleading, since, under the modern rule, the call of committees does not necessarily terminate in 60 minutes. 4 Hinds § 3119. Today the morning hour does not terminate until the call is exhausted or until the House adjourns (*Manual* § 890) or votes to go into Committee of the Whole (*Manual* § 891), or unless other privileged matter intervenes (4 Hinds § 3131). After the intervening business is concluded, the morning hour call of committees is resumed unless the House adjourns. 4 Hinds § 3133.

Before the expiration of the 60 minutes, the Speaker has declined to permit the call to be interrupted by a committee report (4 Hinds § 3132), or by a unanimous-consent request to consider a bill that is not on the House Calendar (4 Hinds § 3130).

Motions to go Into Committee of the Whole

The House rules permit the interruption of the morning hour call of committees by a motion to go into Committee of the Whole. Rule XXIV clause 5. (Generally, see COMMITTEES OF THE WHOLE.) Under this rule, the motion lies ''after one hour'' of the call of committees, and may be made for the purpose of taking up a particular bill. *Manual* § 891. The motion may interrupt the call of committees after the expiration of 60 minutes (4 Hinds § 3131) and may be made even sooner if the call of committees is exhausted before the hour expires. 4 Hinds § 3141.

Motions

Research References
5 Hinds §§ 5300–5358
8 Cannon §§ 2609–2640
7 Deschler Ch 23
Manual §§ 460, 753, 775, 776, 803

§ 1. In General

Most motions that are used in the practice of the House are specifically provided for by House rule. These motions serve different purposes and are governed by separate procedural requirements, and are treated under separate titles elsewhere in this work. See for example ADJOURNMENT; LAY ON THE TABLE; POSTPONEMENT; PREVIOUS QUESTION; RECONSIDERATION; REFER AND RECOMMIT; SUSPENSION OF RULES.

Motions must also conform to certain common procedural requirements, such as that a Member offering a motion must rise to his feet and address the Chair. § 3, infra. While recognition for a motion is always at the discretion of the Speaker (see RECOGNITION), he will ordinarily entertain any motion that is in order under the rules of the House and in accordance with its parliamentary practices. 4 Hinds § 3550. Where a motion not in order under the rules of the House is, without objection, considered and agreed to, it controls the procedure of the House until carried out, unless the House takes affirmative action to the contrary. See 90–2, Oct. 8, 1968, p 30212.

§ 2. Form; Reading of Motion

Motions entertained by the House must be reduced to writing if demanded by a Member. Rule XVI clause 1. *Manual* § 775. The same practice is followed in the Committee of the Whole. 95–1, May 18, 1977, p 15418. Of course, not every motion is in writing when proposed, and even when the point of order is raised, the Chair may give the proponent an opportunity to reduce the motion to writing before putting the question thereon. 99–2, July 24, 1986, p 17641.

The House rules require that a motion be stated by the Speaker or read by the Clerk (*Manual* § 776) before it can be debated. 5 Hinds § 4938. The Clerk's reading may be dispensed with only by unanimous consent. 94–1, Dec. 15, 1975, p 40671.

Where there is a misunderstanding about the wording of a pending motion, the Chair may restate the motion. But it is not in order to ask that the motion be rereported by the Clerk (89–1, Mar. 25, 1965, p 6101) except by unanimous consent (90–1, Sept. 12, 1967, pp 25201, 25211). If there is doubt, the motion voted on is the motion as stated by the Chair in putting the question and not as stated by the Member in offering the motion. 89–1, Mar. 26, 1965, p 6101.

§ 3. Recognition to Offer

A Member cannot make a motion without rising and addressing the Chair. *Manual* § 394. A motion is not pending until the Chair has recognized its proponent. 98–1, Oct. 27, 1983, p 29631. A Member desiring to offer a motion must actively seek recognition from the Chair before another motion to dispose of the pending question has been adopted, and the fact that he may have been standing at that time is not sufficient to confer recognition. 97–1, Nov. 22, 1981, p 28751.

In general, recognition of a Member to offer a motion is at the discretion of the Chair. In certain rules, this discretion is explicitly stated: In Rule XV clause 6(e)(2, a motion for a call of the House is in order when a Member is recognized for that purpose by the Speaker; and further proceedings under a call are considered as dispensed with ''unless the Speaker, in his discretion, recognizes for a motion'' to compel attendance of absentees. In Rule XVI clause 4, the motions that the Speaker be authorized to declare a recess or to entertain a motion for an adjournment to a day and time certain are entertained ''in his discretion.'' Other motions in Rule XVI are given a precedence under the rules which the Chair is not free to ignore except where a motion of higher privilege is offered. See Rule XIV clause 2, ''When two or more Members rise at once, the Speaker shall name the Member who is first to speak. . .'' (*Manual* § 753).

The Member in charge of the pending bill is entitled at all stages to prior recognition for allowable motions intended to expedite the bill (2 Hinds § 1457; 6 Cannon § 300). But the fact that a Member has the floor on one matter does not necessarily entitle him to prior recognition on a motion relating to another matter. 2 Hinds § 1464. The Member in charge must yield to Members proposing preferential motions (5 Hinds §§ 5391–5395). Ordinarily, when an essential motion made by the Member in charge of a

bill or resolution is decided adversely, the right to prior recognition passes to the Member leading the opposition to the motion. Deschler Ch 23 § 1.2. See also RECOGNITION. As to precedence among particular motions, see motions listed in § 1, supra.

§ 4. Dilatory Motions

It has been the rule since 1890 that ''[n]o dilatory motion shall be entertained by the Speaker.'' Rule XVI clause 10. *Manual* § 803. The Speaker may decline to entertain the motion on his own initiative or on a point of order from the floor. 5 Hinds §§ 5715–5722.

Hinds has said that a motion must be made manifestly for delay in order to justify its rejection as dilatory. 5 Hinds § 5714. Yet the determination of whether a motion is dilatory is entirely within the discretion of the Chair. Deschler Ch 23 § 4.1. Indeed, the question of dilatoriness is not necessarily determined by the length of time at issue or the character of the underlying business, but by the opinion of the Speaker as to whether under the circumstances the motion is made with intent to delay the business of the House. 8 Cannon § 2804.

The Speaker may decline to entertain debate or an appeal on a question as to the dilatoriness of a motion if to do so would defeat the object of the rule. 5 Hinds § 5731.

§ 5. Withdrawal; Reoffering

Generally

A motion having been made, a House rule places it in the possession of the House but permits its withdrawal at ''any time before decision or amendment.'' Rule XVI clause 2. *Manual* § 776. This rule is interpreted to mean that a motion may be withdrawn in the House as a matter of right unless the House has taken some action thereon (Deschler Ch 23 § 1), such as a demand for the previous question or the ordering of the previous question (5 Hinds §§ 5355, 5489; 104–1, June 24, 1995, p ____). The House does not vote on the withdrawal of the motion, if timely. *Manual* § 460. Unanimous consent is not required if withdrawal occurs before a decision is made on the motion as offered or there is an amendment thereof. 94–1, Mar. 26, 1975, p 8897; 94–2, Sept. 22, 1976, p 31902.

A motion may be withdrawn although an amendment may have been offered to the motion and be pending. 5 Hinds § 5347; 8 Cannon § 2639. A motion may be withdrawn prior to action thereon even though it is under consideration as unfinished business postponed from the preceding day. 95–1, June 17, 1977, p 19693.

Action by the House which will preclude withdrawal of a motion is the ordering of the yeas and nays on the motion. 5 Hinds § 5353. Unanimous consent to withdraw the motion is required where the yeas and nays have been ordered. 91–2, July 9, 1970, p 23524. But a motion may be withdrawn after a voice and a division vote thereon where the Chair has not announced the result, and where another type of vote might be had on the motion. 95–1, Sept. 22, 1977, p 30290. The Chair may decline to permit a withdrawal while he is counting a vote. 96–1, Nov. 13, 1979, p 32185.

Modification of Motion; Reoffering

A Member having the right to withdraw a motion before a decision thereon has the resulting power to modify the motion. 5 Hinds § 5358; 101–2, Oct. 23, 1990, p ____. But the proponent does not necessarily have the right to reoffer the motion, especially where it is a secondary motion under Rule XVI clause 4; such motions may properly be offered only at the times designated by the rule. Deschler Ch 23 § 1.

Withdrawal of particular motions, see articles listed above (§ 1, supra). Withdrawal of amendments, see AMENDMENTS.

Oaths

Research References
1 Hinds §§ 6–22
6 Cannon §§ 127–185
1 Deschler Ch 2 §§ 5, 6
Manual §§ 197–206
U.S. Const. art. I § 5, art. VI clause 3

§ 1. In General; Administering the Oath

Generally

The Constitution requires that every Senator and every Representative swear or affirm to uphold the Constitution of the United States. U.S. Const. art. VI clause 3. The form of the oath and the procedure for its administration is regulated by statute. 2 USC § 25. Form of oath, see 5 USC § 3331 and *Manual* § 197.

Until a Member-elect has subscribed to the oath, he does not enjoy all the rights and prerogatives of a Member of Congress. Deschler Ch 2 § 2.1. Members who have not taken the oath are not entitled to vote (8 Cannon § 3122) or introduce bills (*Manual* § 300). However, unsworn Members have participated at the beginning of a session in organizational business, such as the election of the Speaker. 1 Hinds § 224. Although a Member has been named to a committee before taking the oath (4 Hinds § 4483) under the modern practice the election of such a Member to a standing committee may be made effective only upon being sworn. See H. Res. 26, H. Res. 27, Jan. 6, 1983.

In the early practice of the House, it was the custom to administer the oath by state delegations. Beginning with the 71st Congress, however, Members-elect have been sworn in *en masse*. 6 Cannon § 8. Under this practice, the Speaker, on opening day, administers the oath of office to all Members-elect at one time, although a Member-elect whose right to take the oath has been challenged may be asked to stand aside. 93–1, Jan. 3, 1973, p 15; 94–1, Jan. 14, 1975, p 19. A Member-elect who does not take the oath of office on opening day may appear in the well, in response to the Speaker's invita-

tion, and take the oath. 92–1, Jan. 25, 1971, p 229; 92–1, Feb. 1, 1971, p 1257. Included among those to whom the Speaker administers the oath are Delegates-elect and the Resident Commissioner from Puerto Rico (93–1, Jan. 3, 1973, p 15), and Members-elect elected to fill vacancies (92–2, Apr. 10, 1972, p 11865; 96–1, Apr. 9, 1979, pp 7744, 7745).

Credentials as Basis for Taking Oath

Although the Clerk will not as a general rule enroll Members-elect who appear without certificates of election, the House itself may authorize the administration of the oath to Members-elect who appear without appropriate formal credentials. 1 Hinds §§ 162–168, 553–564. For example, a Member-elect may be sworn on the basis of letters or telegrams from the executive department of the state of representation, attesting as to his due election. See Deschler Ch 2 §§ 3.1–3.4. And the House may authorize the administration of the oath where credentials have not yet arrived, pursuant to a statement by another Member-elect or a state official that the election in issue is neither contested nor questioned. Deschler Ch 2 § 3. Such authorization is provided by unanimous consent. 86–2, Mar. 11, 1960, p 5294; 92–2, Apr. 11, 1972, p 12172; 95–2, Feb. 21, 1978, p 3853. Unofficial state communications declaring the results of the election may be laid before the House before the unanimous-consent request for the administration of the oath. 97–2, July 15, 1982, p 16332.

Authorization by Resolution

The administration of the oath may be authorized by resolution after a challenge to the right to be sworn has been made. Such resolutions have included provisions collateral to the actual administration of the oath, such as a condition that the final right to the seat be referred to a committee. Deschler Ch 2 § 5.

Failure or Refusal to Take the Oath

Members-elect entitled to take the oath may decline it by resigning before taking a seat (2 Hinds §§ 1230–1234), since membership cannot be imposed on one without his consent. A Member-elect may be permitted to defer his taking of the oath, without declining his seat, until such time as questions regarding his qualifications are resolved. Deschler Ch 2 § 5. But where a Member-elect fails to appear to take the oath, the House may by resolution provide that if he fails to appear to take the oath by a certain date, the seat will be declared vacant. 90–1, Mar. 1, 1967, p 4997.

Precedence

The administration of the oath is a matter of high privilege. The oath may be administered before the reading of the Journal (1 Hinds § 172), and takes precedence of a motion to amend the Journal (1 Hinds § 171). It has been held in order to administer the oath during a roll call (97–1, Jan. 22, 1981, p 693), in the absence of a quorum (1 Hinds § 174), or on Calendar Wednesday (6 Cannon § 22). The administration of the oath is in order even after the previous question has been ordered on a pending matter. 91–1, Oct. 3, 1969, p 28487; 97–1, Jan. 5, 1981, p 103. And debate on a resolution reported from the Committee on Rules may be interrupted to allow a new Member to take the oath of office. 88–1, Dec. 24, 1963, p 25526.

§ 2. Absent Members and the Oath; Use of Deputies

The Speaker, or a deputy named by him, may be authorized by resolution to administer the oath of office to a Member-elect absent because of his illness (92–1, Jan. 22, 1971, p 144; 93–1, Jan. 3, 1973, p 28; 94–1, Jan. 14, 1975, p 33), or because of some illness in his family (98–1, Jan. 3, 1983, pp 51, 52). The resolution may authorize the administration of the oath at some location other than the House. 1 Hinds § 170; 6 Cannon § 14. Persons who may be designated by the Speaker to administer the oath to an absent Member-elect include another Member (87–1, Jan. 3, 1961, p 26), a state or county judge (92–1, Jan. 22, 1971, p 144; 93–1, Jan. 3, 1973, p 28), or a federal district court judge (97–1, Jan. 5, 1981, p 114). The deputy so designated reports thereon to the House (92–1, Jan. 22, 1971, p 145; 96–1, Jan. 24, 1979, p 976), which report may take the form of a letter from the deputy designated by the Speaker (86–1, Jan. 12, 1959, p 559).

§ 3. Challenging the Right To Be Sworn

Generally

Any Member-elect may challenge the right of any other Member-elect to be sworn when the Speaker directs the membership-elect to rise to take the oath of office. Deschler Ch 2 § 6. The fact that the challenging party has not himself been sworn is no bar to his right to invoke this procedure. 1 Hinds § 141. He must base his challenge either on his own responsibility as a Member-elect or on specified facts or documents. Deschler Ch 2 § 6.2. Such challenges are generally directed at a single Member-elect, but in several instances the challenge has been directed against an entire state delegation. 1 Hinds §§ 457, 460–462; Deschler Ch 2 § 6.4. The authority to challenge the right of a Member-elect to be sworn is based on the U.S. Constitu-

tion, which designates the House as the sole judge of the elections, returns, and qualifications of Members. U.S. Const. art. I § 5 clause 1. Generally, see ELECTION OF MEMBERS.

Procedure

When a challenge is proposed, the Speaker asks the challenged Member not to rise to take the oath *en masse* with the rest of the membership. The House and not the Speaker determines the action to be taken in such cases. Deschler Ch 2 § 6.1; *Manual* § 199. Debate on the right of the Member-elect to be sworn is not in order until after the remaining Members have been sworn. Deschler Ch 2 § 6.3. The pendency of a challenge does not preclude the entertainment of other business before the House, and all other organizational business may completed before a challenge is resolved. 1 Hinds § 474; Deschler Ch 2 § 6.

Several courses of action are open to the House in disposing of a challenge. First, the House may simply seat a Member by authorizing the administration of the oath pursuant to a resolution determining the right to the seat. Deschler Ch 2 § 6.5. Second, the House may by resolution authorize the administration of the oath based on the Member-elects *prima facie* right to the seat, but at the same time refer the determination of his final right to committee. 1 Hinds §§ 528–534. Finally, the House may by resolution refer the *prima facie* as well as the final right to the seat to committee, without authorizing the administration of the oath. Deschler Ch 2 §§ 6.6, 6.7.

Resolutions relating to the right of a challenged Member-elect to be sworn are privileged. 90–1, Mar. 1, 1967, p 4997. The resolution is open to amendment where the House has not ordered the previous question thereon. 91–1, Jan. 3, 1969, pp 15, 22–25. The challenged Member-elect may, by unanimous consent, be permitted to participate in debate on the resolution. 90–1, Jan. 10, 1967, pp 15, 23. The time for debate on the resolution may be extended by unanimous consent. 90–1, Mar. 1, 1967, p 4997.

As to the procedure to be followed in contested elections, see ELECTION CONTESTS AND DISPUTES.

§ 4. Oaths Relating to Classified Information

In 1995, a new provision was added to the Code of Official Conduct—Rule XLIII of the House rules. The new provision, clause 13, prescribes an oath to be executed by all Members, officers and employees of the House before obtaining access to classified information:

> I do solemnly swear (or affirm) that I will not disclose any classified information received in the course of my service with the House of Rep-

resentatives, except as authorized by [the] House of Representatives or in accordance with its rules. *Manual* § 939.

The Committee on Standards of Official Conduct has interpreted this clause as applying to classified information provided by ''any person,'' not merely to data furnished by the House or by the executive branch. *Memorandum For All Members, Officers and Employees,* July 12, 1995.

Officers

Research References
1 Hinds §§ 186–283
2 Hinds §§ 1307–1418
6 Cannon §§ 23–37, 247–282
1 Deschler Ch 6 §§ 1–22
Manual §§ 428, 621–635, 650–653, 861

§ 1. House Officers; Elections

In General

The Constitution directs that the House choose its Speaker and other officers. U.S. Const. art. I § 2. The ''other officers'' not specified by title in the Constitution have carried various titles. Currently, they are the Clerk, Sergeant at Arms, Chief Administrative Officer, and Chaplain. *Manual* § 635. Of these, only the Speaker has traditionally been chosen from the sitting membership of the House. *Manual* § 26. The Constitution does not limit his selection from among that class, but the practice has been invariably followed. The Speaker's term of office thus expires at the end of his term of office as a Member, whereas the other House officers continue in office until their successors are chosen and qualified. 1 Hinds § 187.

In the 102d Congress, the position of the Postmaster, for many years an elected officer of the House, was eliminated with the adoption of the House Administrative Reform Resolution. *Manual* § 654a. The Doorkeeper of the House, formerly an elective officer of the House, was not reestab-

lished when the rules were adopted for the 104th Congress (*Manual* § 651d), the responsibilities of that position being transferred to the Sergeant at Arms.

There are other offices established in the rules of the House or by statute. Persons are appointed, not elected to these offices. Rule I contains authority for the offices the General Counsel (clause 11) and for an Historian (clause 10). Rule VI describes the duties of the Inspector General. The duties and appointing authority for the positions of Parliamentarian, Legislative Counsel and Law Revision Counsel are carried in law. See *Manual* §§ 992, 996.

Election of Speaker

Under the modern practice, the Speaker is elected by *viva voce* vote on a roll call by a majority of those present (1 Hinds § 204; *Manual* § 27). The Clerk appoints tellers for this election but the House, and not the Clerk, decides by what method it shall elect. 1 Hinds § 210. The motion to proceed to the election of Speaker is privileged (8 Cannon § 3883) and debatable unless the previous question be ordered (*Manual* § 312). The House may ask candidates for Speaker to state their views before proceeding to election. 1 Hinds § 218.

In two instances the House chose a Speaker by plurality of votes, but confirmed the choice by majority vote. In 1849, the House had been in session 19 days without being able to elect a Speaker, no candidate having received a majority of the votes cast. The voting was *viva voce*, each Member when called naming the candidate for whom he voted. Finally, after the fifty-ninth ballot, the House adopted a resolution declaring the Speaker to be elected by a plurality. 1 Hinds § 221. In 1856, the House was again in the midst of a struggle over the election of a Speaker. One hundred and twenty-nine ballots had been taken without any candidate receiving the majority of the votes cast. The House then adopted a resolution permitting the election to be decided by a plurality. 1 Hinds § 222.

Election of Other Officers

The Clerk, Sergeant at Arms, Chief Administrative Officer, and Chaplain are elected for each Congress by resolution. Deschler Ch 6 § 16 (with forms); 93–1, Jan. 3, 1973, p 16. At the commencement of a Congress, each party's caucus selects one nominee for each such office. The majority submits its slate of nominees and the minority usually submits a substitute resolution containing its slate. The House then votes on these resolutions (Deschler Ch 6 § 16), which may be offered by the caucus chairmen (92–2, Sept. 25, 1972, p 8718). Such a resolution is offered from the floor as

privileged (92–2, June 21, 1972, p 21691), and may be divided for a separate vote for the Chaplain, an uncontested office (95–1, Jan. 4, 1977, p 52).

Oath

Each officer of the House takes the oath prescribed by law. 5 USC § 3331 (with form). The oath is administered to them by the Speaker. Deschler Ch 6 § 17. An officer elected to hold an additional office concurrently takes a separate oath for the additional office. Deschler Ch 6 § 17.1. The oath is administered by the Speaker to those officers who have been elected by the House (92–2, Sept. 25, 1972, p 8718; 94–1, Dec. 17, 1975, p 41324), and sometimes to those who have been appointed on a temporary basis (92–2, June 30, 1972, p 23665; 94–1, Nov. 17, 1975, p 36901), although generally an appointee does not appear at the bar to take the oath but subscribes thereto in writing when he accepts the appointment. Deschler Ch 6 § 17.2; 89–2, Mar. 14, 1966, p 5712. The oath has been administered to an officer-elect prior to the effective date of his election. 92–2, June 26, 1972, p 22387. Generally, see OATHS.

§ 2. Removal From Office

Both the Speaker and the House have the authority to remove the Clerk, Sergeant at Arms, and Chief Administrative Officer. Rule II. *Manual* § 635. An officer of the House may be removed from office pursuant to the adoption of a simple resolution (1 Hinds §§ 288–290), which may be offered as a matter of privilege (1 Hinds § 284; 6 Cannon § 35). The Speaker may be removed at the will of the House. *Manual* § 315. As a basis for removal, the House has considered allegations:

- That the Clerk altered and falsified a House document (1 Hinds § 284).
- That the Clerk was negligent in the administration of the contingent fund (1 Hinds § 283) or had misappropriated House funds (1 Hinds § 287).
- That an officer was guilty of misconduct or corruption in office (1 Hinds §§ 288, 289).

§ 3. The Speaker

The Speaker is the Presiding Officer of the House, and is charged with numerous duties and responsibilities by law and by the House rules. His term of office begins on his election and the taking of his oath of office. The term ends on the expiration of the Congress in which he was elected, unless he has resigned, died, or been removed from office. Deschler Ch 6 § 1. He cannot serve for more than four consecutive Congresses. Rule I clause 7(b) (adopted in 1995).

As the Presiding Officer of the House, the Speaker maintains order (*Manual* § 622), manages its proceedings, and governs the administration of its business. Deschler Ch 6 §§ 2–8. The major functions of the Speaker with respect to the consideration of measures on the floor include recognizing Members who seek to address the House (*Manual* § 749), construing and applying the House rules (*Manual* § 624), and putting the question on matters arising on the floor for a vote (*Manual* § 629).

The Speaker's role is an impartial one and his rulings serve to protect the rights of the minority. 88–1, June 4, 1963, pp 10151–65. In seeking to protect the interests of the minority, he has even asked unanimous consent that an order of the House be vacated where the circumstances so require. 89–1, May 18, 1965, p 10871.

§ 4. — Jurisdiction and Duties; Rulings

The Speaker presides over all regularly scheduled House business. His duties include:

- Calls to order and the approval of the Journal. *Manual* § 621.
- The reference of bills and other matters to committee. *Manual* § 700.
- The disposition of business on the Speaker's table. *Manual* §§ 882, 883.
- The designation of a Speaker pro tempore (*Manual* § 633), and the appointment of Chairmen of the Committee of the Whole (*Manual* § 861a).
- Recognizing Members, putting unanimous-consent requests, and stating motions. Deschler Ch 6 §§ 3.14 *et seq.*
- Supervision of the timing of debate and other proceedings in the House. Deschler Ch 6 § 3.25.
- Ruling on points of order and answering parliamentary inquiries. Deschler Ch 6 § 3.
- Making appointments pursuant to statute, the House rules, and House resolutions (Deschler Ch 5 § 6). Appointments to committees, see COMMITTEES.
- Certification to a U.S. Attorney of persons found to be in contempt of a House committee. Deschler Ch 6 §§ 3.40 *et seq.*
- Declaring the House in recess pursuant to his inherent power in the event of an emergency (Deschler Ch 6 § 3.44), or pursuant to the House rules or to a House resolution authorizing him to take such action (See RECESS).

The Speaker also:

- Signs various documents, including warrants and subpenas. *Manual* § 624.
- Makes preliminary decisions as to questions of privilege. 3 Hinds §§ 2649, 2650, 2654.
- Determines the presence of a quorum, conducts quorum counts, and counts certain votes. 4 Hinds § 2932; *Manual* §§ 55, 629, 810.

- Announces the absence of a quorum without unnecessary delay. 6 Cannon § 652.
- Maintains order in debate. *Manual* § 760.
- Administers censure by direction of the House. 6 Cannon §§ 236, 237.
- Designates Members to travel on official business of the House. *Manual* § 634b.
- Appoints Members to conference committees. *Manual* § 536.
- Declares the House adjourned when the hour previously fixed for adjournment arrives. 5 Hinds § 6735.

Many matters have been held to be beyond the scope of the Speaker's responsibility under the rules. The Speaker does not:

- Construe the legislative effect of a pending measure (*Manual* § 627) or the merits thereof (Deschler Ch 6 § 4.20).
- Respond to hypothetical questions (Deschler Ch 6 §§ 4.13 *et seq.*; *Manual* § 627); render anticipatory rulings on amendments (96–1, May 9, 1979, p 10486), or answer inquiries based on hypothetical assumptions (Deschler Ch 6 § 4.14).
- Determine questions that are within the province of the Chairman of the Committee of the Whole (5 Hinds § 6987; *Manual* § 846b).
- Pass on the constitutionality of the House rules (95–1, Sept. 8, 1977, p 28123; 95–1, Sept. 12, 1977, p 28801) or of amendments offered to pending bills (95–2, May 22, 1978, p 13325), or render other judgments on the validity of pending legislation (8 Cannon § 2225; 94–2, Sept. 22, 1976, p 31874).
- Resolve questions as to the consistency of an amendment with the measure to which it is offered (*Manual* § 466), or with an amendment which has already been adopted (5 Hinds § 5781; 95–1, Sept. 15, 1977, p 29440).
- Answer inquiries as to the availability or meaning of amendments not yet offered. 97–1, June 25, 1981, p 14082.
- Decide whether a Member should be allowed to display an exhibit in debate (Deschler Ch 6 § 4.10), except under the Speaker's duty to preserve decorum (*Manual* § 622).
- Rule on the sufficiency or effect of committee reports (Deschler Ch 6 §§ 4.22, 4.23; *Manual* § 627).
- Rule on ambiguities in legislative language. Deschler Ch 6 § 4.24.
- Construe the consequences of a pending vote. Deschler Ch 6 §§ 4.27, 4.28.
- Respond to parliamentary inquiries as to whether the failure of House conferees to follow a proposed course of action would be beyond their scope of authority. 8 Cannon § 2246; 97–1, Oct. 29, 1981, p 26049.
- Rule out bills because they are already before the House in another form. 2 Hinds §§ 1325, 1327.
- Determine whether a Member should be censured (2 Hinds § 1275) or whether an office he holds is incompatible with his membership (6 Cannon § 253), these being matters for the House to decide.

§ 5. — Participation in Debate and Voting

Debate

Although the Speaker's usual role is that of the Presiding Officer, there have been many instances in which he has made a statement from the Chair or where he has relinquished the Chair and participated in the debate on the floor. *Manual* § 353. See also 86–2, June 23, 1960, p 14088; 87–2, May 8, 1962, p 7981; 88–2, June 18, 1964, p 14344. He may take the floor for purposes of debate both in the House (Deschler Ch 6 §§ 5.1, 5.2) and in the Committee of the Whole (86–2, Aug. 31, 1960, p 18734; 87–2, Mar. 29, 1962, p 5398; 87–2, May 8, 1962, p 7962). If the Speaker is to participate in debate on the floor of the House, it is his practice to call another Member to the Chair to serve as Speaker pro tempore. 2 Hinds § 1360; *Manual* § 358.

Voting

Under the early rules of the House, the Speaker was barred from voting except under certain circumstances. 5 Hinds § 5964. Today, the Speakers have the same right as other Members to vote but rarely exercise it. *Manual* § 632. Under the modern House rules, the Speaker may vote on any matter that comes before the House. He is required to vote where his vote would be decisive or where the House is engaged in voting by ballot. Rule I clause 6. *Manual* § 632. The duty of giving a decisive vote may be exercised after the intervention of other business, if a correction of the roll shows a condition wherein his vote would be decisive. 5 Hinds §§ 6061–6063. On an electronic vote, the Chair directs the Clerk to record him and verifies that instruction by submitting a vote card. 101–2, Oct. 17, 1990, p ____.

§ 6. — The Speaker Pro Tempore

Appointment or Election

A Speaker pro tempore is usually designated by the Speaker or elected by the House. Less frequently, he is designated by the Speaker and approved by the House. Deschler Ch 6 §§ 10 *et seq*. For a period not to exceed three legislative days, he is designated by the Speaker; for longer periods, the Speaker pro tempore is approved or elected by the House. *Manual* §§ 633, 634. A Member is sometimes designated Speaker pro tempore by the Speaker, and then, subsequently, is elected by the House. 93–2, Feb. 20, 1974, p 3514.

A Speaker pro tempore is elected pursuant to resolution (89–2, Mar. 15, 1966, p 5823; 94–2, May 21, 1976, p 15085), which may be offered by the

chairman of the caucus (89–2, Jan. 10, 1966, p 60) or by the Majority Leader (94–1, June 26, 1975, p 20967). A Speaker pro tempore by designation leaves the Chair pending the offering of a resolution electing him as Speaker pro tempore. 89–2, Jan. 10, 1966, p 6.

Oath of Office

The oath of office is administered to an elected Speaker pro tempore, but not to a designated Speaker pro tempore. Deschler Ch 6 § 11. The oath is administered to an elected Speaker pro tempore by the Speaker himself (96–1, Dec. 20, 1979, pp 37317, 37318), by the Dean of the House (94–1, Mar. 26, 1975, p 8947), or by another Member (96–1, Nov. 5, 1979, p 30933).

Who May Serve

The Speaker pro tempore must under the rules be a Member of the House. *Manual* § 633. He may be, and usually is, a member of the majority party (97–1, Nov. 23, 1981, p 28897), such as the Majority Leader (87–1, Sept. 27, 1961, p 21545; 97–1, Dec. 16, 1981, p 31850), or the Majority Whip (88–1, Nov. 18, 1963, p 22015), but the Dean of the House has served in that capacity (89–1, Jan. 19, 1965, p 946), and, on rare ceremonial occasions, the Minority Leader has been named as Speaker pro tempore (87–1, June 12, 1961, p 10035).

§ 7. — Powers and Functions

Generally

The Speaker pro tempore, as the occupant of the Chair, exercises many functions that would normally fall within the purview of the presiding officer. Routine functions that are within the scope of authority of a Speaker pro tempore are calling the House to order, making various announcements, answering parliamentary inquiries, putting the question, counting for a quorum, ruling on points of order, and designating another Speaker pro tempore. Deschler Ch 6 §§ 9, 10. An elected Speaker pro tempore may also administer the oath of office to a Member-elect. Deschler Ch 6 §§ 12.8, 14.8.

Designated Speaker pro tempore

The authority of a Speaker pro tempore to exercise certain powers depends on whether he is designated, designated and approved, or elected. The powers of a designated Speaker pro tempore, as compared with those of an elected Speaker pro tempore, are relatively limited. Deschler Ch 6 § 10.

Absent unanimous consent or specific House approval, a designated Speaker pro tempore may not:

- Refer Presidential messages to committee. 89–2, Sept. 8, 1966, p 22049; 89–2, Jan. 24, 1966, p 909; 90–1, Aug. 31, 1967, p 24843.
- Announce appointments made by the Speaker pursuant to law. 96–1, Jan. 31, 1979, p 1511.
- Appoint conferees or make appointments of additional conferees. Deschler Ch 6 §§ 12.9, 12.10.
- Appoint Members to attend a funeral. Deschler Ch 6 § 12.14.

Under the former practice, only an elected Speaker pro tempore could sign enrolled bills in the absence of the Speaker. 96–1, Nov. 5, 1979, p 30933. The House in the 99th Congress amended Rule I clause 7 to authorize the Speaker to designate with the approval of the House a Member to sign enrolled bills as Speaker pro tempore (without being elected by the House). 99–1, Jan. 3, 1985, p 394.

Elected Speaker pro tempore

An elected Speaker pro tempore assumes a much greater scope of authority from the Speaker than a designated Speaker pro tempore. He may, for example, appoint conferees, appoint committees to inform the President of a pending adjournment, and preside at a joint session of Congress. Deschler Ch 6 § 14.

§ 8. — Term of Office

The term of office of a Speaker pro tempore may be for a limited time, such as one or two days (Deschler Ch 6 § 11) or only for a brief period during a day (Deschler Ch 6 § 11.7), but for periods of longer than three days, the approval of the House is required. *Manual* § 633. Such approval may be given by unanimous consent (Deschler Ch 6 § 11.14) or by resolution (94–1, Mar. 26, 1975, p 8947). This period may be extended beyond *sine die* adjournment to a day certain (97–1, Dec. 16, 1981, p 31850). The term of office normally ends when the Speaker resumes the Chair. Deschler Ch 6 § 11.

§ 9. Other House Officers

The Clerk

The Clerk has specific responsibilities spelled out in House rules, in statutes, or as delegated to him by the House. He presides when a new Congress convenes (Rule III clause 1; *Manual* §§ 637–639); he has duties related to the conduct of House business, and he or his employees have respon-

sibilities relating to the processing of bills, the preparation of the Journal, and the taking and tallying of votes. To assist the House in its consideration of measures, the Clerk reads bills (*Manual* § 428), reads names alphabetically during the taking of certain votes and elections (*Manual* § 765), notes all questions of order and decisions thereon and places them in the Journal (*Manual* § 641), reports disorderly words of a Member who has been called to order (*Manual* § 761), certifies to the passage of all bills and resolutions (*Manual* § 643), makes corrections during engrossment (*Manual* § 479), and presents enrolled bills to the Speaker for signature and transmittal to the Senate (*Manual* § 575).

The Clerk also announces pairs after votes (*Manual* § 660), calls the Corrections Calendar (*Manual* § 746), reads motions (*Manual* § 776), receives petitions and private bills (*Manual* § 849), disseminates copies of amendments offered in the Committee of the Whole (*Manual* § 870), and provides a place where Members may sign discharge petitions (*Manual* § 908). The Clerk also has jurisdiction over the official reporters of the House, subject to the direction and control of the Speaker. *Manual* § 923.

In one instance, the Clerk carried out the duties of his own office as well as those of the Sergeant at Arms, having been elected to serve concurrently as Sergeant at Arms following the death of the incumbent. Deschler Ch 6 § 16.3.

The Clerk may designate and authorize one or more of his employees to perform the duties of his office during his absence, except for such duties as are imposed on him by statute. *Manual* § 647. The designation is laid before the House by the Speaker. 89–1, Feb. 16, 1965, p 2759; 92–1, Jan. 29, 1971, p 973; 95–1, Jan. 4, 1977, p 74. The designation may provide that such authorization is to remain in effect until revoked. 91–1, Oct. 29, 1969, p 32076.

Sergeant at Arms

The duties of the Sergeant at Arms on the floor are prescribed by the House rules (Rule IV, *Manual* § 648) and by statute (2 USC § 79). Under these provisions, the Sergeant at Arms maintains order, and executes arrest warrants for persons cited for contempt of the House or a committee. In addition, he enforces the prohibition against Members walking across or out of the Hall of the House while the Speaker is addressing the House (*Manual* § 763), appoints officers to send for and arrest absent Members when so ordered by the Speaker under Rule XV clause 2 (*Manual* § 768), and brings absent Members before the House (*Manual* § 773).

Chief Administrative Officer

The Chief Administrative Officer of the House has the operational and financial responsibility for functions assigned to him by the Speaker and the Committee on House Oversight. He is subject to policy direction and oversight of the Speaker and the committee. He reports to the Speaker and to the committee. He reports semiannually on the financial and operational status of each function under his jurisdiction. Rule V, adopted in 1995.

The Chaplain

The Chaplain is responsible for offering a prayer at commencement of each day's sitting of the House. *Manual* § 655. The prayer, which does not require a quorum (Deschler Ch 6 § 21.1), is offered daily, whether the House had adjourned until the next day or recessed at its previous sitting. Deschler Ch 6 § 21.2.

There are often ''guest chaplains.'' The daily prayer has been offered by visiting clergy of various denominations and nationalities. 92–1, Dec. 6, 1971, p 44882; 93–1, Oct. 23, 1973, p 34818. In the absence of the Chaplain, the prayer has been offered by a Member who was an ordained minister. 93–1, May 31, 1973, p 17441.

§ 10. Vacancies

The Speaker may make temporary appointments to fill vacancies in the offices of the Clerk, the Sergeant at Arms and the Chaplain. 2 USC § 75a–1. Pursuant to this authority, the Speaker has temporarily filled vacancies caused by the death of the Chaplain (89–2, Mar. 14, 1966, p 7512), or by the resignation of the Clerk (94–1, Dec. 17, 1975, p 41324), or Sergeant at Arms (102–2, Mar. 12, 1992, p ____). Such appointments are effective until such time as the House acts by the adoption of a resolution to fill the vacancy on a permanent basis. Such a resolution, which may be offered by the chairman of the party caucus, is privileged. 94–1, Dec. 17, 1975, p 41324.

The resignation of an elected officer of the House is subject to acceptance by the House. 102–2, Mar. 12, 1992, p ____.

Order of Business

Research References
4 Hinds §§ 3056–3152
6 Cannon §§ 708–757
6 Deschler Ch 21 §§ 1–8, 28–31
Manual §§ 878–899

A. The Daily Order of Business

§ 1. In General; Varying the Order of Business

Generally

The order or sequence in which business is taken up for floor consideration is governed by various House rules. A general rule for the ''daily order of business'' is set forth in Rule XXIV clause 1. *Manual* § 878. Other procedures affecting the order of business include the Discharge Calendar as provided for by Rule XIII (*Manual* §§ 746, 747), the Private Calendar (Rule XXIV clause 6, *Manual* § 893), the Corrections Calendar (Rule XIII clause 4(a), *Manual* § 745a), Calendar Wednesday (Rule XXIV clause 7, *Manual* § 897), and suspensions (Rule XXVII clause 1, *Manual* § 902). The order of business specified by such rules may be varied by unanimous-consent agreements (see CONSIDERATION AND DEBATE), and by special orders reported from the Committee on Rules and adopted by the House. Generally, see SPECIAL RULES.

Although Rule XXIV states the daily order of business, it does not bind the House to a fixed daily routine. Other House rules make certain important subjects privileged so as to permit the daily order of business to be inter-

rupted or even supplanted entirely for days at a time. See § 7, infra. But while privileged matters may interrupt the order of business, they may do so only with the consent of a majority of the House, as expressed by its vote on the adopting of a special rule, on a motion to resolve into Committee of the Whole, on the question of consideration or some other procedural question. It is this system that enables the House to give precedence to its most important business without at the same time losing the power by majority vote to go to any other bills on its calendar. *Manual* § 879.

The order of business may also be affected when the Speaker exercises his discretionary authority to recognize Members on particular questions. The Chair may refuse to recognize for unanimous-consent requests and holds the power of recognition at all times. See RECOGNITION.

Scheduling Business

The business of the House is scheduled by the Speaker and the Members who with him constitute the leadership, acting in concert with the leadership of each standing committee. Deschler Ch 21 § 1. The daily or weekly agenda of the House is ordinarily formulated by the Leadership and implemented by special rules reported from the Committee on Rules and adopted by the House. The legislative schedule for the House is announced to the Members by the majority leader or whip or his designee, or, rarely, by the Speaker himself. 87–2, Aug. 16, 1962, p 16730; 88–2, May 21, 1964, p 11690.

§ 2. Sequence of Particular Business

The general rule specifying the daily order of business is set forth in Rule XXIV clause 1 (*Manual* § 878), as follows:

- First: Prayer by the Chaplain.
- Second: Reading and approval of the Journal, unless postponed.
- Third: Pledge of Allegiance to the Flag.
- Fourth: Correction of reference of public bills.
- Fifth: Disposal of business on the Speaker's table.
- Sixth: Unfinished business.
- Seventh: The morning hour for bills called up by committees.
- Eighth: Motions to go into Committee of the Whole.
- Ninth: Orders of the day.

Ranked first in the daily order of business, the prayer precedes all business. No business is in order before the prayer, which is offered daily when the House meets. Deschler Ch 21 § 2. A point of order of no quorum is not entertained before the prayer. *Manual* § 774c.

The next order of business is the approval of the Journal. Messages from the President or the Senate have been received, and questions of privileges of the House have been raised before the approval of the Journal, but no other business, including privileged business, may intervene. See JOURNAL.

Following the approval of the Journal is the Pledge of Allegiance to the Flag, which is led by a Member at the invitation of the Speaker. One-minute speeches, although not provided for by Rule XXIV, are sometimes entertained by unanimous consent. § 3, infra. It is then in order to offer motions or unanimous-consent requests for the rereferring of public bills. See INTRODUCTION AND REFERENCE OF BILLS.

Rule XXIV next provides for the disposal of business on the Speaker's table. Such business consists of executive communications, messages from the President, bills, resolutions, and messages from the Senate, and House bills with Senate amendments. Clause 2. *Manual* § 882. Messages from the President and messages from the Senate are matters of privilege and may be received, laid before the House and disposed of at any time when business permits. Deschler Ch 21 § 2. Disposition of Senate bills, see SENATE BILLS; AMENDMENTS BETWEEN THE HOUSES.

Under the prescribed order of business in Rule XXIV, the motion to resolve into Committee of the Whole is in order after the morning hour for consideration of bills reported by committees and before ''orders of the day.'' The morning hour provision is largely obsolete and is not used under the modern practice to call up legislative business. ''Orders of the day'' have not been used in many years, the House relying instead on special orders, which often supersede the regular order of business for lengthy periods. 4 Hinds § 3056. See SPECIAL RULES.

An order of business resolution reported from the Committee on Rules making in order the motion to resolve into the Committee of the Whole (or permitting the Speaker to declare that the House so resolve) to consider a particular bill, gives precedence to the motion (equal to the precedence of the motion to resolve into Committee of the Whole for consideration of an appropriation bill). Deschler Ch 21 § 30.3. The motion to resolve into the Committee of the Whole may also be made privileged by the provisions of a statute. Deschler Ch 21 §§ 30.8 *et seq.*

As to when particular matters are in order, see APPROPRIATIONS; CONFERENCES BETWEEN THE HOUSES; CALENDARS; DISTRICT OF COLUMBIA BUSINESS; PRIVATE CALENDAR; QUESTIONS OF PRIVILEGE; QUORUMS; RESOLUTIONS OF INQUIRY; VETO OF BILLS.

§ 3. The Daily Practice

The sequence of events on the House floor on any given day may vary from the prescribed order. Certain customs and norms have been developed over the last 40 years which allow Members to express their concerns on matters not pending before the House or scheduled for consideration in the daily or weekly agenda. One-minute speeches, special-order speeches and the ''morning hour'' are all vehicles for this type of free expression. See CONSIDERATION AND DEBATE.

On each legislative day, certain events do occur in a predictable order. The prayer, the approval of the Journal, the Pledge of Allegiance, all occur with regularity, although the actual vote on the approval of the Journal may be postponed.

Before reaching the scheduled business of the day, the Speaker usually agrees to recognize Members for one-minute speeches. He may limit the number if the anticipated legislative schedule is full. See CONSIDERATION AND DEBATE for practices and norms relating to such speeches. Because of the precise language in the rules governing the Private Calendar, the Corrections Calendar and the discharge rule, one-minute speeches may await the disposition of those types or classes of business.

Following the disposition of one minutes, the Chair may signal the advent of legislative business by laying down messages received from the President or the Senate and may make announcements concerning appointments or informing the House of communications addressed to him in his official capacity.

Following these ''preliminary matters,'' the House may proceed to business holding a privileged status for that day. That special status may be set by a standing rule, by a special order reported by the Committee on Rules or an order previously adopted by the House either by unanimous consent or motion.

Once this business is reached, the prescribed order is still subject to some flexibility. Certain roll call votes may be postponed or ''clustered'' to occur in sequence, pursuant to the Speaker's authority under Rule I.

When scheduled business has been completed, it is again customary for Members to be given an opportunity to address the House on other subjects. Special-order speeches may be granted, by unanimous consent, for up to one hour per Member. Limits on the number and duration of such speeches have been mutually agreed upon by the leadership of the two parties and enforced by the exercise of the Speaker's power of recognition.

B. Privileged Business

§ 4. In General; Under the Constitution

Privileged business is business of such importance as to enjoy precedence over the regular order of business; it is business which can supersede or interrupt other matters which might otherwise be called up or be pending before the House. *Manual* §§ 879, 880.

Privileged questions are to be distinguished from what are termed ''questions of privilege.'' Privileged questions relate to the order or priority of business under the rules of the House, whereas ''questions of privilege'' pertain to the safety and dignity of the House or the integrity of its proceedings, or to the rights or reputation of its Members under Rule IX. 3 Hinds §§ 2654, 2718. See QUESTIONS OF PRIVILEGE.

Privilege may be derived from language used in the U.S. Constitution, from the rules and practices of the House, and from statutes enacted pursuant to the legislative rulemaking power. Because of constitutional provisions a veto message from the President is privileged for consideration when received by the House. This privilege arises from article I, section 7, clause 2 of the Constitution. See VETO OF BILLS. Likewise, since the power of the House in the impeachment of civil officers arises from article I, section 2, clause 5 of the Constitution, the House has determined that propositions to impeach, and reports from the committee investigating charges of impeachment, are highly privileged for consideration. See IMPEACHMENT. Similarly, since article VI, clause 3 provides that Representatives shall take an oath, the administration of the oath to Members is privileged; a Member-elect appearing during a session may be administered the oath as a matter of the highest privilege which may interrupt other business. See OATHS.

Certain propositions are privileged for consideration because of indirect constitutional mandate. Examples are concurrent resolutions for adjournment *sine die* or to a day certain (see ADJOURNMENT) and motions incident to establishing a quorum (see QUORUMS). But privilege is not conferred merely because the question is one committed to the House under the Constitution. For example, a resolution to confirm the nomination of the Vice President, a duty committed to the House under the 25th amendment to the Constitution, is not privileged for consideration. Deschler Ch 21 § 28.

§ 5. Business Privileged by House Rule

A variety of bills, reports, and resolutions are privileged for consideration under the House rules. Some committees are given the power to report to the House at any time on certain subjects. See COMMITTEES. Certain

kinds of reports are privileged for consideration when reported by any committee, including reports on the contempt of witnesses (see CONTEMPT POWER) and on resolutions of inquiry (see RESOLUTIONS OF INQUIRY).

In order to retain its privilege, a privileged report must be submitted as privileged from the floor while the House is in session (and not filed in the hopper). A committee may, however, obtain by unanimous consent permission to file a privileged report while the House is not in session. Deschler Ch 21 § 29.

Privilege of matters relating to election contests, see ELECTION CONTESTS AND DISPUTES.

§ 6. — Privilege of Particular Business

The House rules make certain important subjects privileged so as to permit the daily order of business to be interrupted or even supplanted entirely for days at a time. Among the privileged matters which may interrupt the order of business are:

- General appropriation bills. Rule XVI clause 9; 4 Hinds § 3072.
- Conference reports. Rule XXVIII clause 1(a); 5 Hinds § 6443.
- Motions to request or agree to a conference. Rule XX. 92–2, Aug. 1, 1972, p 26153.
- Special orders reported by the Committee on Rules. Rule XI clause 4(b); 4 Hinds §§ 3070, 3071, 4621.
- Consideration of amendments between the Houses after disagreement. 4 Hinds §§ 3149, 3150.
- Questions of privilege. Rule IX. See QUESTIONS OF PRIVILEGE.
- Bills coming over from a previous day with the previous question ordered. 5 Hinds §§ 5510–5517.
- Bills returned with the objections of the President. 4 Hinds §§ 3534–3536.
- Measures in order on the Corrections Calendar. Rule XIII clause 4.

Some propositions are privileged for consideration on certain days of the week or month. On any Monday or Tuesday, for example, the Speaker may recognize Members to move to suspend the rules and pass bills. *Manual* § 902. The second and fourth Mondays of the month are set apart for such business as may be presented by the District of Columbia Committee. *Manual* § 899. Bills on the Private Calendar are called on the first Tuesday of the month and also on the third Tuesday if directed by the Speaker. *Manual* § 895. The Speaker has the discretion to dispense with the call of the Private Calendar on the third Tuesday. 101–2, Oct. 16, 1990, p _____. The Speaker has the discretion to direct the call of Corrections Calendar bills on the second and fourth Tuesdays of the month. *Manual* § 745a.

Other classes of business are not only given a prescribed day but are also keyed to a specific reference in the order of business prescribed in Rule XXIV clause 1. Motions to discharge, for example, when perfected and otherwise eligible can be called up after the approval of the Journal (Rule XXVII clause 3); a motion to resolve into the Committee of the Whole on a general appropriation bill is in order immediately following the reading of the Journal (Rule XVI clause 9); District business is given a position following ''disposal of business on the Speaker's table which requries reference only'' (Rule XXIV clause 8); the Corrections Calendar follows the Pledge of Allegiance (Rule XIII clause 4). Both the provisions which designate a day for the class of business, and those which give that class a specified place in the order of business, can be changed by the House by adoption of a special order, generated by a report from the Committee on Rules, a unanimous-consent agreement, or a motion under the suspension procedure.

The privileged status that is conferred on certain classes of business does not necessarily carry with it an exemption from applicable layover requirements of the House rules. Thus, a conference report may be called up for floor consideration as privileged business only after the report has been filed and is in compliance with the three-day layover and two-hour availability requirements of Rule XXVIII, discussed elsewhere. See CONFERENCES BETWEEN THE HOUSES.

On occasion when the Speaker is faced with competing Members seeking recognition for consideration of different items of business, he must determine whether one class or type of business is of a higher precedence than the other. In making these determinations, he relies on the language of the House rules which give the matter precedence and, occasionally, on prior rulings of the Chair which may predetermine his choice. Deschler Ch 21 § 31 contains a compilation of such rulings. They are of lesser relevance in the modern practice since the House usually determines the order of consideration by adoption of a special order reported from the Committee on Rules. It should also be noted that the priority of propositions of equal or near-equal privilege may be determined by the Chair as within his power of recognition.

§ 7. — Privileged Motions

Certain motions relating to the order of business are given precedence under the rules of the House. Examples are the motion to suspend the rules, which may be used to change the order of business as well as to adopt a measure (see SUSPENSION OF RULES), and the motion to dispense with Cal-

endar Wednesday (see CALENDAR WEDNESDAY). The motion that the House resolve itself into the Committee of the Whole to consider a general appropriation bill is likewise privileged under the rules. See APPROPRIATIONS.

Under the modern practice, a motion to discharge a committee, when called up pursuant to the provisions of the discharge rule (*Manual* § 908), is privileged, and the Speaker may decline to recognize for a matter not related to the proceedings. 7 Cannon § 1010. Such motions take precedence over business merely privileged under the general rules of the House. 7 Cannon § 1011. See DISCHARGING MEASURES FROM COMMITTEES.

A matter may be sent to conference pursuant to a privileged motion permitted by House Rule XX clause 1 where the motion has been authorized by the committee (or committees) with jurisdiction over the bill. *Manual* § 827. See 94–2, Aug. 26, 1976, p 27831; 95–1, Oct. 12, 1977, p 33433. The motion is privileged at any time the House is in possession of the papers if the appropriate committee has authorized the motion and the Speaker in his discretion recognizes for that purpose. 94–1, Mar. 20, 1975, p 7646. A motion to discharge or instruct conferees is privileged under Rule XXVIII clause 1(c). See CONFERENCES BETWEEN THE HOUSES.

Precedence of secondary motions, see AMENDMENTS; LAY ON THE TABLE; POSTPONEMENT; PREVIOUS QUESTION; REFER AND RECOMMIT; and RECONSIDERATION.

Points of Order; Parliamentary Inquiries

A. POINTS OF ORDER

B. PARLIAMENTARY INQUIRIES

Research References
5 Hinds §§ 6863–6975
8 Cannon §§ 3427–3458
Manual §§ 627, 637, 861b, 865

A. Points of Order

§ 1. In General; Form

Generally

A point of order is in effect an objection that the pending matter or proceeding is in violation of a rule of the House. (Grounds for point of order, see § 7, infra.) Any Member (or any Delegate) may make a point of order. 6 Cannon § 240. Although there have been rare instances in which the Speaker has insisted that the point of order be reduced to writing (5

Hinds § 6865), the customary practice is for the Member to rise and address the Chair:

MEMBER: Mr. Speaker (or Mr. Chairman), I make a point of order against the [amendment, section, paragraph].

CHAIR: The Chair will hear the gentleman.

It is appropriate for the Chair to determine whether the point of order is being raised under a particular rule of the House. The objecting Member should identify the particular rule that is the basis for his point of order. 98–2, Oct. 2, 1984, p 28522.

The proper method for opposing a point of order is to seek recognition for that purpose at the proper time, not by making a point of order against the point of order. 94–1, Sept. 18, 1975, p 29333.

Effect

Where a point of order is sustained against the *consideration* of a bill, the bill is recommitted to the reporting committee (4 Hinds § 4382) or to its place on the appropriate calendar (7 Cannon § 869). If a bill is on the wrong calendar and the Chair sustains a point of order against it for that reason, the bill is placed on the appropriate calendar. 7 Cannon § 869.

During the consideration of a bill, if a Member raises a point of order against certain language, and the Chair sustains the point of order, the language is automatically stricken from the pending proposition. 7 Cannon § 2148.

Paragraphs ruled out in Committee of the Whole on points of order are not reported to the House. 4 Hinds § 4906; 8 Cannon § 2428. Under the former practice, it was necessary to reserve points of order against appropriation bills before resolving into Committee, but this practice was eliminated in 1995 when the House adopted Rule XXI clause 8 (adopted in the 104th Congress, Jan. 4, p ____). Under clause 8, points of order on general appropriation bills are ''considered as reserved.'' *Manual* § 849a.

A point of order against any part of an amendment, if sustained, is sufficient to invalidate the entire amendment. 5 Hinds § 5784; 91–2, June 16, 1970, p 19841. A point of order may be directed against an entire section of a bill or may be precisely aimed at a subpart thereof. However, the entire section is vulnerable, and if a point of order is sustained against a portion of a pending section the entire section may be ruled out of order. 92–1, Nov. 4, 1971, pp 39281, 39286. A point of order may be sustained against an entire paragraph, although only a portion is subject to objection. 5 Hinds § 6883. The stricken paragraph's headings and subheadings are likewise eliminated. 8 Cannon § 2353.

Multiple Points of Order

It is within the discretion of the Chair as to whether he will entertain more than one point of order to a paragraph at the same time. 89–2, Mar. 29, 1966, p 7103. As a rule, the Chair will decline to decide a point of order raised against a proposition until all other points of order on the same proposition have been submitted. 8 Cannon § 2310. Indeed, the Chair may in his discretion require all points of order against a pending proposition for alleged violation of a particular House rule to be stated at the same time. This allows the Chair to rule separately on each point of order in such order as he determines. This procedure enables the Chair to save the time of the House by hearing all points of order and then sustaining any valid point of order without reaching all the others. 94–2, Sept. 28, 1976, p 33020. Thus, where several points of order are made against an amendment and the Chair sustains one of them, he need not rule on the remaining points of order as the amendment is no longer pending. 95–2, June 14, 1978, p 17647. Where the Chair entertains two points of order against a provision, he may sustain only one of them even though both points of order are conceded by the manager of the bill. 99–2, Aug. 1, 1986, p 18650.

Cross References

Points of order based on particular rules or against particular propositions are considered in many other articles in this work. See for example AMENDMENTS; APPROPRIATIONS; CONSIDERATION AND DEBATE; GERMANENESS OF AMENDMENTS.

§ 2. Role of the Chair

Generally

In the House, under the rules, the Speaker decides ''all questions of order, subject to an appeal by any Member.'' Rule I clause 4. *Manual* § 624. When a Speaker pro tempore occupies the Chair he decides questions of order. When the House is in Committee of the Whole the Chairman decides independently of the Speaker. 5 Hinds §§ 6927, 6928. At the organization of a new Congress, prior to the election of a Speaker, questions of order are decided by the Clerk. *Manual* § 637. See also 1 Hinds § 64.

The Chair may examine the form of an offered amendment to determine its propriety and may rule it out of order even where no point of order is raised from the floor. 96–2, May 8, 1980, p 10421. Ordinarily, however, the Chair will rule out a proposition only when a point of order is raised, and only when he is required under the circumstances to respond to the point of order. 98–1, June 7, 1983, p 14657. It is not the duty of the Speaker

to decide any question which is not directly presented in the course of the proceedings of the House. 2 Hinds § 1314.

The Speaker may decline to rule on a point of order until he has had time for examination and study (3 Hinds § 2725; 8 Cannon §§ 2174, 2396) and on rare occasions he has submitted a question to the House itself for a decision (4 Hinds §§ 3282, 4930; 5 Hinds § 5323). In reaching a decision on a point of order, the Chair may hear argument.

Where a special rule has been adopted permitting only certain amendments to be offered to a bill during its consideration in Committee of the Whole, the Chair is guided by the explicit language of the rule, if unambiguous, rather than the intention of the Committee on Rules, in ruling on whether a specific amendment is in the permitted class. 99–2, June 18, 1986, p 14267.

The Chair may consider legislative history established during debate on an amendment in resolving any ambiguity in the amendment when ruling on a point of order against it. 95–2, June 14, 1978, p 17651.

Consideration of Prior Rulings; Reversals

A decision by the Speaker or Chairman is a precedent in resolving subsequent disputes where the same point of order is again in controversy. In looking to precedents to resolve a point of order, the House is applying a doctrine familiarly known to appellate courts as *stare decisis*, under which a judge in making a decision will look to earlier cases involving the same question of law. In the same way, the House adheres to settled rulings, and will not lightly disturb those which have been established by prior decision of the Chair. 2 Hinds § 1317; 6 Cannon § 248; 1 Deschler p vi. But while the Chair will normally not disregard a decision previously made on the same facts, such precedents may be examined, distinguished and even overruled where shown to be erroneous. 4 Hinds § 4637; 8 Cannon §§ 2794, 3435; 99–2, Sept. 12, 1986, p 23178. Indeed the Chair may after further argument reverse his own ruling on a point of order (8 Cannon § 3435), where existing law not previously called to the Chair's attention would require the ruling to be reversed (98–1, June 8, 1983, p 14877).

§ 3. Reserving Points of Order

Generally

A point of order against a proposition may be ruled out as untimely if it is not made until after debate on the proposition has begun. § 4, infra. It is therefore a common practice for a Member to reserve a point of order against an amendment and then, after debate on an amendment, either press

or withdraw the point of order. 8 Cannon § 3430; 91–1, Oct. 28, 1969, pp 31886, 31888. Reserving points of order against amendments, see AMENDMENTS.

The reservation of a point of order against an amendment is permitted at the discretion of the Chair and does not require unanimous consent. 93–2, Mar. 26, 1974, p 8264; 97–1, Oct. 14, 1981, pp 23882, 23884. A Member wishing to reserve a point of order must rise and address the Chair, and may not reserve a point of order through private agreement with the Member in charge of the bill. 5 Hinds § 6867. The reserving Member need not specify the basis of his reservation. 93–1, July 19, 1973, pp 24950, 24951. But merely reserving ''the right to object'' does not constitute the reservation of a point of order. 92–2, Apr. 18, 1972, p 13114.

Effect of Withdrawal

The reservation of a point of order being withdrawn, another Member may immediately renew it (86–1, July 28, 1959, p 14524), or press another point of order (87–2, Mar. 27, 1962, p 5164). Thus, where a Member reserves a point of order against an amendment and then, after debate on the amendment, withdraws the point of order, the point of order may be renewed by another Member. 91–1, Oct. 28, 1969, pp 31886, 31888. Withdrawal of points of order generally, see § 11, infra.

§ 4. Time to Raise Points of Order

Generally

Unless otherwise provided by the House rules, a point of order against a proposition should be made when the proposition is presented for consideration, not after such consideration has begun. 5 Hinds § 6888. This rule is applied to points of order against bills and resolutions as well as points of order against various motions, such as the motion to recommit. A point of order against a motion to recommit a bill on the basis that it contains an amendment seeking to change an amendment already adopted by the House must be made after the motion is read, and comes too late after there has been debate thereon. 97–2, May 13, 1982, p 9838. A point of order against a report involving the privileges of the House is properly raised after the report is read. 89–2, Oct. 18, 1966, pp 27439–48.

Under the rules of the House, certain points of order may be raised ''at any time.'' For example, a point of order may be raised ''at any time'' under clause 5(a) Rule XXI, which prohibits the inclusion of appropriations in a bill reported by a legislative committee. *Manual* § 846a. A point of order may likewise be raised ''at any time'' under Rule XXI clause 5(b),

which prohibits committees from reporting tax or tariff measures if they do not have jurisdiction over such measures. *Manual* § 846b. Such a point of order may be directed against the prohibited language whether appearing in a bill or an amendment thereto, but in either case should be raised during the reading for amendment under the five-minute rule. See Deschler Ch 25 § 12.14.

Effect of Intervening Debate

A point of order against a proposition will ordinarily be ruled out as untimely if debate on the merits of the proposition has already begun. 5 Hinds §§ 6891–6901; 8 Cannon § 3440. However, the Chair will not permit brief debate to preclude a point of order made by a Member who has shown due diligence. 5 Hinds § 6906. The Chair may recognize for a point of order against language in a bill notwithstanding intervening debate where the Member raising the point of order was on his feet, seeking recognition, before debate began. 86–1, May 11, 1959, p 7905. Indeed, a Member who is on his feet seeking recognition at the proper time to make a point of order may be recognized by the Chair even though the Clerk has read past the language to which the point of order applies. 87–1, Sept. 15, 1961, p 19729; 91–2, June 4, 1970, p 18395. But the mere fact that a Member was on his feet does not entitle him to make a point of order where he has not affirmatively sought recognition at the time the language complained of was read for amendment. 91–2, Apr. 14, 1970, p 11648.

Effect of Intervening Amendments

A point of order against a proposition is untimely if it is not raised until after an amendment to the proposition has been offered. 5 Hinds §§ 6907–6911; 8 Cannon § 3443. The point of order may be precluded even by a pro forma amendment. 8 Cannon § 3445.

Points of order against a bill or portion thereof are considered by the Chair prior to recognition of Members to offer amendments. 86–1, July 28, 1959, p 14529; 93–2, June 21, 1974, pp 20591, 20592. Points of order against a paragraph of a bill are considered by the Chair before Members are recognized to offer amendments to that paragraph. 91–2, June 4, 1970, p 18395. If by unanimous consent a bill is considered read and open to amendment at any point, points of order should be stated before *any* amendments are offered. 87–2, Oct. 3, 1962, p 21883.

While the reservation of a point of order by one Member inures to all Members who may then make the point of order when entertained by the Chair, withdrawal of a reservation by one Member requires other Members to either make or continue to reserve the point of order at that point, and

a further reservation comes too late after there has been subsequent debate. 97–2, Dec. 15, 1982, p 30939.

§ 5. — Against Bills and Resolutions

Where a point of order against a measure would, if sustained, prevent its consideration, the appropriate time to make the point of order is when the measure is called up in the House or pending the motion to resolve into the Committee of the Whole (8 Cannon § 2252), whichever procedure represents initial consideration of the measure. 94–1, Sept. 10, 1975, p 28270. A Member may not insist on a point of order against the consideration of a bill where the manager of the bill withdraws the motion that the House resolve itself into the Committee of the Whole for consideration of the bill (96–1, Dec. 3, 1979, p 34385); the point of order must be made anew if and when the motion is again made to resolve into Committee for consideration of that bill. 96–1, Dec. 3, 1979, p 34385.

A point of order against a resolution is properly raised when the resolution is called up, before debate thereon. 88–2, Aug. 19, 1964, p 20212. A point of order relating to the manner in which a resolution should be considered should be made before such consideration begins. 5 Hinds § 6890. And a point of order that the text of a privileged resolution does not reflect the action of the reporting committee comes too late after there has been debate on the resolution. 91–2, Aug. 5, 1970, pp 27449–51.

§ 6. — Against Amendments

A point of order against an amendment should be raised when the amendment is offered. Where a measure is being considered in Committee of the Whole, points of order are raised during the reading for amendment. Once the amendment is agreed to and reported to the House, it is too late to raise a point of order against it, the proper time having been at the point the amendment was offered in Committee. 92–2, June 1, 1972, pp 19479, 19481, 19483. The point of order is properly made (or reserved) immediately after the reading of the amendment (89–2, Mar. 29, 1966, pp 7115, 7118; 92–1, Mar. 10, 1971, pp 5856–58; 94–1, July 8, 1975, p 21628), or following agreement to a unanimous-consent request that the amendment be considered as read (92–2, Mar. 29, 1972, pp 10749–51). And it should be disposed of before amendments to that amendment are offered. 96–1, Mar. 21, 1979, pp 5779–82. Generally, see AMENDMENTS.

§ 7. Application to Particular Questions; Grounds

A point of order must ordinarily be based on an objection that the pending matter or proceeding is in violation of some rule of the House. And it is always appropriate for the Chair to ascertain or identify the particular rule being invoked. 98–2, Oct. 2, 1984, p 28522. While questions of order arising under the rules are determined by the Chair, he does not:

- Decide hypothetical questions. 6 Cannon §§ 249, 253; 101–1, Nov. 20, 1989, p ____.
- Determine the legal effect of propositions. 8 Cannon §§ 2280, 2841; 98–1, Mar. 16, 1983, p 5669.
- Rule on the consistency of proposed actions of the House. 2 Hinds §§ 1327–1336; 8 Cannon §§ 3237, 3458.
- Construe the constitutional powers of the House. 2 Hinds §§ 1255, 1318–1320; 8 Cannon §§ 2225, 3031, 3071, 3427.
- Rule on the propriety or expediency of a proposed course of action. 2 Hinds §§ 1275, 1337.
- Consider contingencies which may arise in the future. 7 Cannon § 1409.
- Determine the legislative effect of the adoption of an amendment. 99–2, Aug. 7, 1986, p 19675.

§ 8. Relation to Other Business

When a point of order is raised against a proposition, consideration of that proposition is precluded until the point of order is disposed of. The Chair should rule on the point of order before proceeding to other questions, such as the method of voting on the pending matter. 8 Cannon § 3432. A timely point of order may be given precedence even over a parliamentary inquiry. 95–1, June 7, 1977, p 17714. An amendment may not be offered to a proposition against which a point of order is pending. 8 Cannon § 2824. And the previous question may not be demanded on a proposition until the point of order is resolved. 8 Cannon §§ 2681, 3433. Debate on the merits of the proposition is likewise precluded. 5 Hinds § 5055; 8 Cannon § 2556.

§ 9. Debate on Points of Order; Burden of Proof

In General; Recognition

Recognition for debate on a point of order is extended at the discretion of the Chair. 8 Cannon §§ 3446–3448. Members seeking to be heard must address the Chair and cannot engage in ''colloquies'' on the point of order. 99–2, Sept. 18, 1986, p 24084. The time to be allowed for debate on a point of order is likewise within the discretion of the Chair. A Member speaking on a point of order does not control a fixed amount of time which he can

reserve or yield. 5 Hinds § 6919; 94–2, Sept. 30, 1976, p 34075; 95–2, Feb. 23, 1978, p 4451. Where a point of order is conceded by the manager of the bill, the Chair may sustain the point of order without debate or comment. 86–2, Apr. 12, 1960, p 7941.

Scope of Debate

The rule that debate on questions of order must be relevant is strictly construed. 8 Cannon § 3449. Debate is limited to the question of order and may not go to the merits of the proposition being considered. 90–1, July 19, 1967, p 19412; 91–2, Nov. 25, 1970, p 38971; 94–2, June 24, 1976, p 20371.

The Chair will not entertain unanimous-consent requests to permit Members to revise and extend their remarks on points of order. 94–2, Sept. 22, 1976, p 31874.

Burden of Proof

The proponents of an amendment have the burden of proof where a point of order is raised against the amendment on the ground that it is not germane (8 Cannon § 2995) or on the ground that it is unauthorized (7 Cannon § 1179). Under House practice, those upholding an item in an appropriation have the burden of showing the law authorizing it. 4 Hinds § 3597; 7 Cannon §§ 1179, 1276. See also 8 Cannon § 2387. Thus, a point of order having been raised, the burden of proving the authorization for language carried in an appropriation bill falls on the proponents and managers of the bill. Deschler Ch 26 § 9.4.

Where a point of order is raised against consideration of a bill on the ground that the report thereon does not adequately reflect all changes in existing law as required by Rule XIII clause 3—the Ramseyer rule—the proponent of the point of order has the burden of proof and must cite the specific statute that will be affected by the pending bill; in the absence of such citation the point will not be entertained. 8 Cannon § 2246.

§ 10. Waiver of Points of Order

Generally

A point of order may be deemed waived where it is not raised in timely fashion. And where a motion which might have been subject to objection is, in the absence of a point of order, agreed to, it represents the will of the House and governs its procedure until the House orders otherwise. 90–2, Oct. 8, 1968, pp 30212–14.

Points of order may also be waived by unanimous consent. Indeed, in one instance, by unanimous consent, the House agreed to waive all points

of order against an unspecified House amendment to be offered by a designated Member to a Senate amendment not yet passed by the Senate. 97–2, Dec. 20, 1982, p 32943.

By Special Rule

Special ''rules'' or resolutions from the Committee on Rules providing for the consideration of a bill often contain provisions expressly waiving points of order against the bill or certain language therein. 7 Cannon § 769; 90–2, May 8, 1968, p 12220. A resolution waiving points of order against a certain provision in a bill has been agreed to by the House even after general debate on the bill has been concluded and reading for amendment has begun. 91–1, May 21, 1969, p 13246. Such waivers will not be implied merely from the fact that the special rule provides for consideration of the bill. 98–1, Mar. 22, 1983, p 6502.

A special rule may limit its waiver to a single point of order or be so drafted as to constitute a blanket waiver of all points of order. But where a resolution providing for the consideration of a bill specifies that ''all points of order against said bill are hereby waived,'' the waiver is applicable only to the text of the bill and not to amendments. 90–2, May 1, 1968, p 11305.

For further discussion, see SPECIAL RULES. See also CONSIDERATION AND DEBATE.

§ 11. Withdrawal of Points of Order

A point of order may be withdrawn at any time before the Chair rules on the point. 8 Cannon § 3430. Once withdrawn, the point may immediately be renewed by another Member. 5 Hinds §§ 6875, 6906; 8 Cannon §§ 3429, 3430. As a rule, a point of order must be pressed when the Chair inquires whether the objecting Member wishes to insist upon it, and comes too late after that Member has stated that he does not insist on his point of order and further debate has intervened. 95–2, Aug. 2, 1978, pp 23921, 23922.

§ 12. Appeals

A ruling of the Chair on a point of order may be subject to challenge through an appeal by a Member. 5 Hinds §§ 6938, 6939. Indeed, the right of appeal from decisions of the Speaker on questions of order is provided for by the House rules (Rule I clause 4). *Manual* §§ 624, 628. An appeal may also be taken from the ruling of the Chairman of the Committee of the Whole on a point of order. 95–1, June 7, 1977, p 17714; 96–1, May 16, 1979, p 11472; 98–2, June 26, 1984, p 18861.

However, a decision on a question of order is not subject to an appeal if the decision is one which falls within the discretionary authority of the Chair. Rulings on questions involving vote counts, for example, traditionally fall within this category. 94–2, June 24, 1976, p 20391. Similarly, because the Chair is exercising discretionary authority, no appeal lies from responses to parliamentary inquiries (5 Hinds § 6955; 8 Cannon § 3457), decisions on recognition (2 Hinds §§ 1425–1428; 8 Cannon §§ 2429, 2646, 2762), decisions on the dilatoriness of motions (5 Hinds § 5731), or from decisions refusing a recapitulation of a vote (8 Cannon § 3128).

An appeal from a ruling of the Chair declining to consider the question of the constitutionality of a provision is not in order, such question being a matter for the House to determine by its vote on the merits. 93–1, May 10, 1973, pp 15290, 15291.

The Speaker's refusal under Rule XV clause 6(e) to entertain a point of order of no quorum when a pending question has not been put to a vote is not subject to an appeal, since that rule contains an absolute and unambiguous prohibition against such a point of order; to allow an appeal in such a case would permit a direct change in the rule itself. 95–1, Sept. 16, 1977, p 29594.

Debate on appeals, see APPEALS.

B. Parliamentary Inquiries

§ 13. In General; Recognition

Recognition of Members for the purpose of propounding parliamentary inquiries is within the discretion of the Chair. 6 Cannon § 541; 90–2, Sept. 11, 1968, pp 26453–56; 103–1, May 26, 1993, p ____. Inquiries concerning the parliamentary situation on the floor are properly directed to the Chair, and it is not in order for a Member to address them to the official reporters. 90–2, May 22, 1968, pp 14375 *et seq.* The Chair may delay his response to a parliamentary inquiry pending examination of relevant House precedents. 8 Cannon § 2174; 95–2, Oct. 13, 1978, p 37016. Responses to parliamentary inquiries are not subject to appeal. 5 Hinds § 6955; 8 Cannon § 3457.

The Chair may take a parliamentary inquiry under advisement (8 Cannon § 2174), especially where the inquiry does not relate to the pending proceedings of the House. 103–1, May 26, 1993, p ____.

§ 14. Subjects of Inquiry

Generally

Parliamentary inquiries concerning the anticipated order of business may be entertained by the Chair. 90–2, Sept. 11, 1968, pp 26453–56. The status of the Clerk's progress in reading a document is also a proper subject for a parliamentary inquiry. 90–2, Oct. 8, 1968, p 30100. And the Speaker may respond to parliamentary inquiries concerning his authority as presiding officer. 95–1, Feb. 16, 1977, pp 4503, 4504. But a Member may not, under the guise of a parliamentary inquiry, offer a motion or other proposition; he must have the floor in his own right for that purpose. 8 Cannon § 2625.

The Chair may decline to entertain an inquiry on a subject not relevant to the pending question. 92–2, June 8, 1972, p 20339; 103–1, June 10, 1993, p ____. The Chair does not respond to hypothetical questions raised under the guise of a parliamentary inquiry. 89–1, Mar. 26, 1965, p 6114; 90–1, Mar. 1, 1967, p 4997. The Chair has declined, for example, to anticipate whether language in a measure would trigger certain executive actions. 101–1, Sept. 20, 1989, p ____.

Although the Chair responds to parliamentary inquiries concerning the application of the rules and precedents to a pending or otherwise pertinent situation, he does not rule on questions not yet presented, such as the allocation of debate time on a conference report not yet filed. 103–1, Aug. 4, 1993, p ____.

As to Amendments

The construction or meaning of an amendment is not a proper subject for a parliamentary inquiry as such matters are for the House and not the Chair to determine. 89–2, Oct. 12, 1966, p 26205; 95–2, Aug. 1, 1978, p 23625; 98–2, May 23, 1984, p 13928. And it is not a proper parliamentary inquiry to ask the Chair to characterize an amendment on which a separate vote has been demanded. 98–2, May 31, 1984, p 14677.

As to House Orders

The Chair may, in his discretion, entertain a parliamentary inquiry to permit an explanation of a pending House order. 99–1, June 19, 1985, p 16367. But it is not a proper parliamentary inquiry to ask the Chair whether a resolution, reported from the Committee on Rules but not yet called up for consideration, would have the effect of violating the rights of Members; the Chair does not render advisory opinions. 99–2, Oct. 14, 1986, p 30862. Questions concerning informal guidelines of the Committee on Rules for advance submission of amendments for possible inclusion under a special rule

may not be raised under the guise of a parliamentary inquiry. 100–2, May 5, 1988, p 9938.

§ 15. Timeliness of Inquiry

Generally

The Chair may decline to respond to a parliamentary inquiry that is untimely. The Chair does not respond to a parliamentary inquiry concerning the propriety of a proposition until the proposition is offered. 90–1, June 28, 1967, p 17754.

Inquiries Raised During Votes

The Chair may refuse to entertain a parliamentary inquiry during a vote that is not related to the vote (90–1, June 28, 1967, p 17748), and may decline to recognize for that purpose during a roll call vote (87–1, Sept. 6, 1961, p 18256). However, the Chair at that time may in his discretion entertain an inquiry relating to the conduct of the call. 95–2, Mar. 14, 1978, p 6840. And while a parliamentary inquiry may not interrupt a division, such inquiries are entertained until the Chair asks those in favor of the proposition to rise. 89–2, Sept. 29, 1966, pp 24455–57. Similarly, the Speaker may entertain a parliamentary inquiry after the yeas and nays are ordered, but prior to the vote. 90–1, Oct. 25, 1967, pp 29933, 29942–44.

The Chair may decline to entertain a parliamentary inquiry as the cost of conducting the pending vote on the ground that the inquiry is not relevant to the pending question. 103–1, June 10, 1993, p ____.

§ 16. As Related to Other Business

A parliamentary inquiry may interrupt matters of high privilege, such as an impeachment proceeding. 6 Cannon § 541. However, during the reading of a bill for amendment, a parliamentary inquiry may not interrupt the reading of a paragraph or section of the bill. 8 Cannon § 2873. And a roll call may not be interrupted for a parliamentary inquiry. 8 Cannon § 3132.

The reading of the Journal may be interrupted by a parliamentary inquiry (6 Cannon § 624), and the Speaker may entertain a parliamentary inquiry relating to the order of business prior to the approval of the Journal (96–1, Feb. 28, 1979, pp 3465, 3466).

During Debate

A Member may not propound a parliamentary inquiry during debate unless yielded to for that purpose by the Member controlling the debate in the House. 98–1, Nov. 18, 1983, p 34055; 99–2, Oct. 1, 1986, p 27466. A

Member may not be taken from the floor by a parliamentary inquiry. 86–2, May 26, 1960, p 11267; 89–1, July 22, 1965, p 17931. He may not be interrupted by a parliamentary inquiry without his consent, and if the Member who has the floor refuses to yield and demands the regular order the Chair will not recognize another Member to propound the inquiry. 94–1, July 8, 1975, p 21628.

While time consumed by a parliamentary inquiry is charged to the Member controlling time who yields for that purpose, the Chair may exercise his discretion to recognize a Member for a parliamentary inquiry when no other Member has the floor, thus consuming no time of the Members controlling debate. 103–1, Mar. 17, 1993, p ____.

Postponement

Research References
5 Hinds §§ 5306–5318
8 Cannon §§ 2613–2617
7 Deschler Ch 23
Manual §§ 443–453, 631, 782, 786, 809

§ 1. Postponement Generally

Authority for Motion

In the House, under Rule XVI clause 4, a matter under debate may be postponed to a future day (or indefinitely) pursuant to a motion by any Member. *Manual* § 782. (As to the Speaker's authority to postpone proceedings on certain questions for a period not to exceed two legislative days, see VOTING.) A matter may also be postponed pursuant to the provisions of a resolution. Deschler Ch 23 § 8.1. And in some instances the postponement of the consideration of a particular class of legislation has been recognized in statutes which reserve to the Congress the right to review certain executive branch actions. See *Manual* § 1013. See *e.g.*, the Trade Act of 1974 (19 USC § 2192).

Postponement Motions

In the House, there are two motions to postpone: (1) the motion to postpone to a day certain, and (2) the motion to postpone a matter indefinitely. Both are permitted by House Rule XVI clause 4. Under that rule, the motion to postpone to a day certain takes precedence over the motion to postpone indefinitely. The rule further provides that, once decided, neither the motion

to postpone indefinitely nor the motion to postpone to a day certain may be made on the same day at the same stage of the question. *Manual* § 782.

The two motions are distinguishable in many respects:

- The motion to postpone to a day certain takes precedence over various secondary motions in clause 4, including the motions to refer or to amend (§ 3, infra), whereas the motion to postpone indefinitely yields to all those secondary motions (§ 7, infra).
- The motion to postpone to a day certain is debatable only within narrow limits (§ 5, infra), whereas debate on the motion to postpone indefinitely may be extended even to the merits of the pending proposition (§ 8, infra).
- The motion to postpone to a day certain merely suspends consideration of the pending measure until the date specified (§ 2, infra), whereas the motion to postpone indefinitely has the effect of finally disposing of the pending matter adversely (§ 6, infra).

Postponement of Measures in Committee of the Whole

The motion to postpone, either to a day certain or indefinitely, is not in order in the Committee of the Whole. Deschler Ch 23 § 5. And it is not in order in the House to move to postpone a bill where the bill is still being considered in the Committee. 4 Hinds § 4915; 8 Cannon § 2436. However, unless barred by the special rule that governs the consideration of the pending bill, it is in order in the Committee to move that a bill be reported to the House with the recommendation that action on it be postponed. 4 Hinds § 4765; 8 Cannon § 2372; Deschler Ch 23 § 5.

Disposition of unfinished matters, see UNFINISHED BUSINESS.

§ 2. Motion to Postpone to a Day Certain

When in Order

The motion to postpone to a particular day is authorized by Rule XVI clause 4 when a question is under debate. *Manual* § 782. The motion is in order in the House and when the House is sitting *as in* Committee of the Whole. 95–1, Nov. 1, 1977, p 36351. The motion is in order following the reading of the pending proposition (Deschler Ch 28 § 6.2), and may be offered before the manager of the proposition has been recognized for debate (96–2, Oct. 2, 1980, pp 28953–78). It is not in order after the previous question has been ordered on the pending matter. 5 Hinds §§ 5319–5321; 8 Cannon §§ 2616, 2617; Deschler Ch 23 § 6.1.

A motion to postpone to ''the next legislative day'' is construed as a motion to postpone to a day certain. 8 Cannon § 2657.

The motion to postpone to a day certain may not specify a particular hour. 5 Hinds § 5307; Deschler Ch 23 § 5.

It is not in order to move to postpone consideration of business to a day certain if that day is Calendar Wednesday (8 Cannon § 2614), except by unanimous consent (7 Cannon § 970).

Forms

In the House

MEMBER: Mr. Speaker, I move that the [further] consideration of House Resolution 321 be postponed until Friday next.

In Committee of the Whole

MEMBER: Mr. Chairman, I move that the Committee now rise and report the bill back to the House with the recommendation that further consideration be postponed until Friday next.

Effect of Motion

When the House adopts a motion to postpone a measure to a day certain, the effect is to suspend consideration of the measure until the day specified in the motion. 8 Cannon § 2614. A subsequent motion providing for an earlier consideration of the matter is not in order. 5 Hinds § 5308.

Application of Motion to Table

The motion to postpone to a day certain is subject to the motion to lay on the table. 96–2, May 30, 1980, p 12825. The adoption of the motion to table does not carry the bill to the table, however, but only the motion to postpone. 8 Cannon § 2657.

Voting

A motion to postpone a proposition to a day certain may be determined by a simple majority vote, even though the proposition itself may require a two-thirds vote for passage. 7 Cannon § 1112. A bill which comes before the House on the day scheduled for it by a special rule likewise may be postponed by a majority vote. 4 Hinds § 3177.

The vote on a motion to postpone a measure to a day certain is subject to a motion to reconsider. 5 Hinds § 5643.

§ 3. — Precedence

The motion to postpone to a day certain is listed fourth among those motions which enjoy precedence when a question is under debate. See Rule XVI clause 4. It follows the motions to adjourn, to lay on the table, and for the previous question, and thus must yield to these more privileged motions. 5 Hinds § 5301; 8 Cannon § 2609. On the other hand, the motion en-

joys precedence over the motions to refer, to amend, or to postpone indefinitely. *Manual* § 782. See also 5 Hinds § 5301. The motion also takes precedence over the question of passing a bill vetoed by the President. Deschler Ch 23 § 7.1.

In Committee of the Whole, where not precluded by a special rule ordering the previous question, the motion to recommend postponement of a bill to a day certain takes precedence over the motion to amend (8 Cannon § 2615), but yields to a motion to report the bill with the recommendation that it pass (4 Hinds § 4765) and to a motion to report the bill with a recommendation that it lie on the table (4 Hinds § 4777).

§ 4. — Application to Particular Propositions

The motion to postpone to a day certain has been applied to a wide variety of measures and questions, it being reasoned that otherwise the majority of the House could not exercise its will over the consideration of its business. 8 Cannon § 2613. However, the motion must be applied to the entire pending proposition, and not merely to a part thereof. 5 Hinds § 5306.

The motion to postpone consideration of a matter to a day certain is applicable to such propositions as:

- A bill coming before the House pursuant to a special rule assigning the day for its consideration. 4 Hinds § 3177.
- Veto messages (4 Hinds §§ 3542–3547; 7 Cannon §§ 1105, 1112), notwithstanding the constitutional mandate that the House ''shall proceed to reconsider'' a vetoed bill (7 Cannon § 1101). See also Deschler Ch 23 § 7.1.
- A resolution of disapproval. Deschler Ch 23 § 6.3.
- A resolution of censure reported from the Committee on Standards of Official Conduct. 96–2, May 29, 1980, p 12650; 96–2, Oct. 2, 1980, pp 28953–78.
- An appeal from the decision of the Chair. 8 Cannon § 2613.

The motion to postpone to a day certain is not applicable to:

- A motion to discharge a committee under Rule XXVII clause 4. Deschler Ch 23 § 6.4.
- A special rule from the Committee on Rules providing for the consideration of an entire class of bills (5 Hinds § 4958) or providing for consideration of a particular bill (Rule XI clause 4(b).

§ 5. — Debate and Amendment

The motion to postpone to a day certain is subject to amendment (5 Hinds § 5754; 8 Cannon § 2824) and is debatable within narrow limits (5

Hinds § 5309). Debate is limited to the advisability of postponement only and may not go to the merits of the proposition to be postponed. 5 Hinds §§ 5310–5315; Deschler Ch 23 § 5; 8 Cannon § 2372; 96–2, May 29, 1980, pp 12649–59. This limitation on debate is also applied to the motion that the Committee of the Whole rise and report with the recommendation that consideration of a measure be postponed to a day certain; such debate is confined to the advisability of postponement and does not extend to the merits of the question under consideration. 8 Cannon § 2372.

In the House a motion to postpone to a day certain is debatable for one hour, controlled by the Member offering the motion. 96–2, Oct. 2, 1980, pp 28953–78; 96–2, May 29, 1980, p 12650. He may seek recognition to move the previous question on the motion and thereby terminate debate and preclude amendment. Deschler Ch 23 § 7.2. Of course, if a motion to table the motion is agreed to, debate on and amendments to the motion to postpone are precluded. 8 Cannon § 2654.

§ 6. Motion to Postpone Indefinitely

Authorization and Effect

The motion to postpone indefinitely is authorized under Rule XVI clause 4. *Manual* § 782. When the House adopts a motion to postpone a measure indefinitely, the action constitutes a final adverse disposition of that measure. Deschler Ch 23 § 5.

Application

The motion to postpone indefinitely has been held not to apply to a veto message from the President (4 Hinds § 3548), a ruling which would appear to be reinforced by the constitutional mandate that the House must ''proceed to reconsider'' the measure. U.S. Const. art. I § 7. However, the motion has been applied to the various other legislative propositions, including:

- House bills with Senate amendment. 5 Hinds § 6200.
- Senate bills with House amendments. 5 Hinds § 6199.
- Resolutions of disapproval. Deschler Ch 23 § 6.3.
- Resolutions relating to the election of House officers. 5 Hinds § 5318.

It should be noted that the motion to postpone indefinitely must be applied to the entire pending proposition, and not merely to a part thereof. 5 Hinds § 5306.

Forms

In the House

MEMBER: Mr. Speaker, I move that the [further] consideration of _____ be postponed indefinitely.

In Committee of the Whole

MEMBER: Mr. Chairman, I move that the Committee rise and report the bill back to the House with the recommendation that the [further] consideration of _____ be postponed indefinitely.

§ 7. — Precedence; Application to Other Motions

In 1822, the House amended the rule (Rule XVI clause 4, *Manual* § 782) which governs the precedence of secondary motions in order when a question is under debate. This amendment took the motion to postpone indefinitely from its place immediately after the motion for the previous question, and relegated it to the end of the list, where it remains to this day. Accordingly, the motion to postpone indefinitely enjoys no precedence over the other secondary motions, and indeed must yield to the motion to adjourn, lay on the table, for the previous question, to postpone to a day certain, to refer, and to amend. 5 Hinds § 5301. See also Deschler Ch 23 § 8.1 (note). Because of its low preferential status, the motion is thus seldom used in the modern practice. It has been held specifically inapplicable to:

- Motions to refer. 5 Hinds § 5317.
- Motions to suspend the rules. 5 Hinds § 5322.
- Motions to resolve into Committee of the Whole. 6 Cannon § 726.
- Motions to discharge a committee under Rule XXVII clause 4. Deschler Ch 23 § 6.4.

§ 8. — Debate and Amendment

The motion to postpone indefinitely is not amendable. Deschler Ch 23 § 8.1 (note). But the motion is open to debate, including debate on the merits of the pending proposition. 5 Hinds § 5316.

Debate on the motion may be precluded by statute with respect to a particular class of legislation. See, for example, the Trade Act of 1974, § 152(d)(3). Notwithstanding such a statute, the House may nevertheless permit debate on the motion by unanimous consent. 98–1, Aug. 1, 1983, pp 21899, 21900.

Previous Question

Research References
5 Hinds §§ 5443–5520, 5569–5604
8 Cannon §§ 2661–2694
7 Deschler Ch 23 §§ 14–24
Manual §§ 461–463, 804–811

§ 1. In General

Function and Purpose

The motion for the previous question is used during the consideration of a matter to terminate debate, foreclose the offering of amendments, and to bring the House to an immediate vote on the main question. § 9, infra. It is the only motion used for this purpose in the House. 5 Hinds § 5456; 8 Cannon § 2662. It is authorized by Rule XVII clause 1 (*Manual* § 804) and is an essential motion in the procedure of the House.

The import of the previous question, in Jefferson's language, is ''shall the main question be now put?'' *Manual* § 452. If the House by majority

vote agrees to the motion, consideration ordinarily ceases and the House is brought to a direct vote on the pending proposition. *Manual* § 804. If the House disagrees to the motion, it throws the main question open to further consideration (§ 15, infra), and transfers the right of recognition to those Members who opposed the motion (§ 16, infra).

The House practice in this regard is to be distinguished from that of the Senate. The Senate does not admit the previous question. 8 Cannon § 2663.

Historical Background

In the early Congresses, the previous question was used in the House for an entirely different purpose than it is today, having been modeled on the English parliamentary practice. As early as 1604, the previous question had been used in the Parliament to surpress a question which the majority deemed undesirable for further discussion or action. *Manual* §§ 442, 463. The Continental Congress adopted this device in 1778, but there was no intention of using it as a means of closing debate in order to bring the pending question to a vote. 5 Hinds § 5445.

As a result, debates from 1807–1811 were prolonged. Finally, in 1811, after an appeal had been taken from a ruling to the contrary by the Speaker, the House decided that there could be no debate after the previous question was ordered, and this decision was adhered to in subsequent rulings by the Speaker. See 11–3, Mar. 2, 1811, H. Jour. p 611.

The previous question was incorporated into the House rules in 1840. See 25–1, Jan. 14, 1840, Globe p 121. To moderate the harsh effects of the rule, seen by some as a way of surpressing a minority, the number required to order the previous question was changed from one-fifth to a majority (see 12–1, H. Jour. pp 402, 406), and a Member was given the right to call for 40 minutes of debate on a proposition if it had not been previously debated. 5 Hinds § 6821. In addition, in 1880, the rule was amended to permit the Speaker to entertain one motion to recommit notwithstanding the ordering of the previous question (§ 13, infra).

§ 2. Offering the Motion

Form

The motion for the previous question may be offered by any Member holding the floor. It must be made in writing if demanded, but is usually made orally:

MEMBER: Mr. Speaker, I move the previous question on the _____ [*proposition*].

SPEAKER: The question is on ordering the previous question.

It is also in order to make a motion and simultaneously demand the previous question on the motion. 5 Hinds §§ 5477–5479.

Where, during the consideration of a bill, a Member states merely ''I move the previous question,'' without further specificity as to the question to be voted on, the Speaker construes it as a motion for the previous question on the bill to final passage and as applicable to all intervening questions. 8 Cannon §§ 2673, 2674. However, when the House has before it several motions, a simple motion for the previous question applies to the immediate proposition only and does not include other pending questions. See 8 Cannon § 2676.

Effect of Special Rule

The ordering of the previous question on a bill may be required by language in a special rule governing consideration of the bill. The rule may provide, for example:

> That at the conclusion of general debate the previous question shall be considered as ordered on _____ [*resolution or other proposition*] to final passage without intervening motion, except one motion to recommit.

When the House is operating under such a rule, the Chair states the motion (''under the rule, the previous question is ordered'') and so a motion for the previous question from the floor is unnecessary. 7 Cannon § 776.

Time Certain Provisions

The motion for the previous question may not include a provision that it is to take effect at a time certain. Such a motion may not include a provision, for example, ''that the previous question be considered as ordered at 5 o'clock.'' 5 Hinds § 5457.

§ 3. — When in Order; Quorum Requirements

The previous question is one of those motions that is in order under the rules of the House ''when a question is under debate.'' Rule XVI clause 4. It is considered a fundamental rule of parliamentary procedure, and as such it is in order even before the rules of the House have been adopted. Deschler Ch 23 § 14.1.

The motion for the previous question is in order in the House (5 Hinds § 5456; 8 Cannon § 2662) and in the House *as in* Committee of the Whole (6 Cannon § 639). See also Deschler Ch 23 § 14.10. The motion is not in order in the Committee of the Whole (4 Hinds § 4716; Deschler Ch 23 § 14.8; *Manual* § 805), but may be moved in the House on an amendment reported from the Committee of the Whole (Deschler Ch 23 § 14.9).

The previous question is ordered by a majority of those voting, a quorum being present. Rule XVII. However, less than a quorum may order the previous question on a motion incident to a call of the House. 5 Hinds § 5458.

§ 4. — Who May Offer

During Debate in the House

The Member in charge of a bill has the prior right to recognition and may move the previous question at any time during the hour allotted to him. 8 Cannon § 3231. While he has the floor he may move the previous question and thereby cut off debate (89–1, Jan. 4, 1965, p 20), even if the effect of the motion is to terminate debate time previously yielded to the minority (95–1, Mar. 9, 1977, p 6816). Other Members may not interpose the previous question during such time as the Member in charge is holding the floor (*Manual* § 807; 2 Hinds § 1458), even though he may not yet have begun his remarks (2 Hinds § 1458). And although he may have surrendered the floor ''for debate only,'' he is entitled to prior recognition to move the previous question when he again regains the floor. 8 Cannon § 2682. If the Member in charge of the pending measure does not move the previous question and loses the floor, any Member having the floor may so move. 5 Hinds § 5475. This is so even though the effect of so moving may be to deprive the Member in charge of control of his measure. 5 Hinds § 5476; 8 Cannon § 2685; *Manual* § 807.

Proponent of Amendment

A Member holding the floor in debate may offer an amendment to the pending proposition and move the previous question on the amendment and on the pending proposition. 95–1, Dec. 6, 1977, p 38393. While the previous question takes precedence over a motion to amend (§ 6, infra), the proponent of an amendment, having been recognized for debate, may not be taken from the floor by another Member who seeks to move the previous question. Deschler Ch 23 § 20.7; 90–2, May 8, 1968, p 12262. This rule is followed even though the amendment offered is merely a pro forma amendment. 92–2, May 8, 1972, pp 16154, 16157. However, a Member making a preferential motion to dispose of a Senate amendment may not move the previous question on that motion as against the right of the Member in charge to the floor. 2 Hinds § 1459.

Effect of Yielding

A Member having the floor may yield time to others for the sole purpose of debate, and still retain the right to resume debate or move the previous question. 8 Cannon § 3383. But where the Member in charge yields to another Member to offer an amendment to his proposition, he loses the floor and the Member to whom yielded is recognized for one hour and may move the previous question on the amendment and on the measure itself. 95–1, Dec. 6, 1977, p 38393. In other words, the Member controlling the time may not yield to another Member to offer an amendment without losing the right to move the previous question. Deschler Ch 23 § 16.2. But the Member so yielding may move the previous question on the pending measure following disposition of the amendment where the proponent of the amendment has not done so and where no other Member seeks recognition. Deschler Ch 23 §§ 16.3, 16.4. And a Member who yields the time to another Member for debate may still be recognized at the end of that time to move the previous question. Deschler Ch 23 § 16.5.

If the Member controlling the floor on a measure yields to a second Member to offer an amendment, a third Member may move the previous question before the second Member is recognized to offer his amendment. Deschler Ch 23 § 14; *Manual* § 807.

§ 5. Precedence; Intervention of Other Matters

Generally

The motion for the previous question is privileged, and takes precedence over another Member seeking recognition for debate (Deschler Ch 23 § 19.1) or to offer an amendment (Deschler Ch 23 § 20.7). The Chair having recognized a Member in charge of a bill for the motion for the previous question, a Member may not be recognized to rise to a question of personal privilege. Deschler Ch 23 § 17.2. However, a message from the Senate (Deschler Ch 23 § 19.4) or the presentation of a conference report (5 Hinds § 6449) is in order notwithstanding the fact that the previous question has been moved or ordered on a pending proposition.

A measure on which the previous question has been ordered takes precedence over a special order from the Committee on Rules, even if the special order provides for the immediate consideration of certain business. 5 Hinds § 5520.

Suspension of the Rules

The motion to suspend the rules may be entertained after the previous question has been moved (5 Hinds §§ 6831–6833), and is admitted at the

Speaker's discretion notwithstanding the ordering of the previous question on a pending measure (5 Hinds §§ 6827, 6833; 8 Cannon § 3418).

§ 6. — Precedence Over Other Motions

Generally

The House rule that establishes the precedence of motions when a matter is under debate lists the motion for the previous question after the motions to adjourn and to lay on the table. Rule XVI clause 4. The motion for the previous question must therefore yield to those motions. 5 Hinds § 5301. The same rule names the previous question ahead of the motions to postpone, to refer, or to amend, and it is over these motions that the motion for the previous question takes precedence. *Manual* § 782.

The Member in charge of a bill and having the floor may demand the previous question notwithstanding that another Member proposes a motion of higher privilege. 8 Cannon § 2684; *Manual* § 807. Likewise, a Member having the floor to offer a motion may move the previous question thereon, although another claims recognition to offer a motion of higher privilege. Deschler Ch 23 § 16.6. However, the motion of higher privilege must be put before the question is put on the previous question. 5 Hinds § 5480; 8 Cannon § 2684; *Manual* § 807. A Member having the floor may not exclude a privileged motion simply by offering a motion of lower privilege and demanding the previous question thereon. 8 Cannon § 2609.

Adjournment

The motion for the previous question yields to the motion to adjourn under the standing rules of the House. *Manual* § 782. However, a motion to adjourn is not in order after the previous question has been ordered on a bill to final passage under a special rule prohibiting any intervening motions. 4 Hinds §§ 3211–3213.

Lay on the Table

The motion to lay on the table takes precedence over the motion for the previous question with respect to the pending proposition. 8 Cannon §§ 2658, 2660; *Manual* § 782. However, the motion to table may not be applied to the motion for the previous question itself. 5 Hinds §§ 5410, 5411. And the motion to table is not in order *after* the previous question is ordered (5 Hinds §§ 5415–5422), or even after the yeas and nays are ordered on the demand for the previous question (5 Hinds §§ 5408, 5409).

While the motion for the previous question yields to the motion to table, if the motion to table is rejected, the question recurs on the motion

for the previous question which was pending when the motion to table was offered. Deschler Ch 23 § 20.1.

Referral or Recommittal

The previous question may be moved on a proposition while a motion to refer it is pending. 8 Cannon § 2678. However, the rule authorizing the previous question specifically permits the use of a motion to commit after the previous question has been moved or ordered. *Manual* § 804. See also § 13, infra.

Motions to Amend

The motion for the previous question takes precedence over motions to amend. Deschler Ch 23 § 20.2; 96–1, July 24, 1979, p 20385. Thus, the motion for the previous question takes precedence over amendments to motions, such as a motion to recommit (Deschler Ch 23 § 20.4) or to instruct conferees (Deschler Ch 23 § 20.5). Of course, if the motion for the previous question is voted down, the pending measure is subject to amendment. But if the amendment is ruled out on a point of order, the previous question may again be moved and takes precedence over the offering of another amendment. Deschler Ch 23 § 20.3.

Where a Member intervenes in a pending proceeding (where a motion to dispose of a Senate amendment is pending) to make a preferential motion to dispose of the amendment in disagreement with the Senate, he may not move the previous question on that motion as against the right of the Member in charge. 2 Hinds § 1459; *Manual* § 807.

§ 7. Scope of Motion; Application to Particular Propositions

Generally

The House rule which permits the motion for the previous question permits its use in a variety of legislative situations. The motion may be sought on ''a single motion, a series of motions allowable under the rules, or an amendment or amendments, or may be made to embrace all authorized motions or amendments and include the bill to its passage or rejection.'' Rule XVII clause 1 (*Manual* § 804). The term ''bill'' as used in this rule is a generic term which includes all legislative propositions which could properly come before the House. 5 Hinds § 5572. Thus, the previous question may be moved on the pending measure and all amendments thereto, or merely on a pending amendment. 90–1, Jan. 10, 1967, pp 31–33; 94–2, Mar. 17, 1976, p 6789. If not otherwise specified, the motion for the previous question applies to all pending motions or amendments. Deschler Ch 23 § 14.2.

The motion for the previous question is generally applicable to any pending measure or motion which is subject to debate or amendment and has been held specifically applicable to:

- The main proposition and a pending motion to refer it to a committee. 5 Hinds § 5466; 8 Cannon § 2678.
- A pending resolution and an amendment thereto. *Manual* § 806.
- The question of approval of the Journal. Deschler Ch 23 § 14.6.
- A private bill under consideration during the call of the Private Calendar. Deschler Ch 23 § 14.5.
- The question of agreeing to a report of the Committee of the Whole that the enacting clause be stricken. 5 Hinds § 5342.
- Resolutions to elect Members to committees. 8 Cannon § 2174.
- Certain amendments to a bill (leaving the remaining amendments open to debate and further amendment). 8 Cannon § 2679.
- All amendments to a bill other than a particular amendment. Deschler Ch 23 § 15.17.
- A substitute amendment. 5 Hinds § 5472.
- Questions of privilege, such as those involving censure of Members or impeachment. 2 Hinds § 1256; 5 Hinds § 5460; 8 Cannon § 2672.
- A motion to limit debate pending a motion to go into the Committee of the Whole. 5 Hinds §§ 5203, 5473.
- A motion to postpone a matter to a day certain. Deschler Ch 23 § 18.2.

The previous question is not applicable to, and may not be demanded on:

- A proposition which is not subject to debate or amendment (4 Hinds § 3077), or which is being considered under procedure which precludes debate or intervening motions (Deschler Ch 23 § 14.12).
- A proposition against which a point of order is pending. 8 Cannon §§ 2681, 3433.
- A single section of a bill. 4 Hinds § 4930; *Manual* § 806.
- More than one bill at a time (except by unanimous consent). 5 Hinds §§ 5461–5464.
- A measure being considered under a motion to suspend the rules and agree thereto. Deschler Ch 23 § 14.11.

Titles and Preambles

The rules of the House permit the offering of an amendment to the title of a bill after its passage. *Manual* § 822. However, it has been held that when the previous question is ordered on a bill *to final passage*, the order applies also to the title of the bill, thereby preventing its amendment. 5 Hinds § 5471.

The ordering of the previous question on a pending resolution does not cover the preamble thereto unless the proponent of the motion so specifies.

A motion to order the previous question on the preamble is in order following the vote on the resolution. See 5 Hinds § 5469 (note 2) and Deschler Ch 23 §§ 14.7, 18.4.

Senate Amendments; Conference Reports

The previous question may be applied to a motion to dispose of a Senate amendment in disagreement, such as a motion to recede. Deschler Ch 23 § 15.6. However, a simple motion for the previous question applies to the immediate pending proposition only and does not apply to other pending questions. 8 Cannon § 2676. Similarly, a motion for the previous question may not be applied to a motion to agree to a conference report and also to a motion to ask a further conference on amendments not included in the report. 5 Hinds § 5465. Likewise, when the previous question is ordered on a motion to send a matter to conference, it applies to that motion alone and does not extend to a subsequent motion to instruct conferees. 8 Cannon § 2675.

Incidental Questions

The previous question covers the main proposition but does not apply to questions that arise after the previous question has been applied and are merely incidental thereto. 8 Cannon § 2687. Thus, in one instance, it was held that the pending question applied to certain resolutions, but not to the question of whether certain Members should be excused from voting thereon. 5 Hinds § 5467.

§ 8. Debate on Motion; Consideration and Disposition

Generally

The motion for the previous question is not debatable (5 Hinds § 5301; Deschler Ch 23 § 21.1; *Manual* § 782) and cannot be amended (5 Hinds § 5754; *Manual* § 452). It is not subject to a motion to table (5 Hinds §§ 5410, 5411; *Manual* § 809) and it cannot be postponed. 5 Hinds § 5322; *Manual* § 451. ''To change it to tomorrow, or any other moment,'' Jefferson wrote, ''is without example and without utility.'' *Manual* § 452. Indeed, he felt that it would be ''absurd'' to postpone the previous question, it being his view that the same result could be had simply by voting against the previous question. *Manual* § 451.

Voting

The motion for the previous question is determined by a simple majority vote, and may be ordered by less than a quorum on a motion incident to a call of the House. 5 Hinds § 5458. A motion for the previous question

on an amendment to a measure and on the measure is not divisible so as to obtain separate votes on ordering the previous question on the two propositions. Deschler Ch 23 § 14.3. 101–2, Sept. 25, 1990, p ____. See also *Manual* § 806. But when the previous question is ordered on an amendment as well as the main proposition to which it is offered, the vote is taken first on the amendment and then immediately on the proposition. Deschler Ch 23 § 15.12. And an order for the previous question does not preclude a demand for a division of the question and for a separate vote on distinct substantive propositions (8 Cannon § 3173), such as a series of resolutions (5 Hinds § 6149).

Withdrawal of Motion; Renewal

A Member may withdraw his motion for the previous question, if the House has not acted thereon (94–1, Mar. 26, 1975, p 8897), and any Member entitled to the floor thereafter may renew that motion (8 Cannon § 2683). If the House acts on the motion and rejects it, the motion may nevertheless be renewed after debate or other intervening business. See Deschler Ch 23 §§ 14.4, 22.17.

Vacating the Ordering of the Previous Question

The action of the House in ordering the previous question is subject to the motion to reconsider (5 Hinds § 5655; 8 Cannon § 2790) and may, by unanimous consent, be vacated. 86–2, Aug. 26, 1960, p 17869; 95–1, Oct. 6, 1977, p 32600. Thus, in one instance, unanimous consent was granted to permit the consideration of an amendment to a measure, even though the previous question was operating on the measure. Deschler Ch 23 § 14.13.

§ 9. Effect

Generally; As Precluding Further Consideration

The adoption of the motion for the previous question by a majority vote stops all debate, precludes the offering of amendments, and brings the House to an immediate vote on the pending matter. Deschler Ch 23 §§ 15, 15.17. That is, with the exceptions discussed below (§§ 13, 14, infra) the House consideration of the proposition terminates. 5 Hinds § 5321. It cannot be modified, corrected, or changed, except by unanimous consent. 5 Hinds §§ 5482, 5485. And a point of order against it may be ruled out as untimely. Deschler Ch 23 § 15.21. The ordering of the previous question also affects the right of a proponent to withdraw his proposal. A motion cannot ordinarily be withdrawn once the previous question has been ordered on it. 5 Hinds §§ 5355, 5489.

As Precluding Other Motions

With the exception of the motions to reconsider or to recommit (§§ 13, 14, infra) the ordering of the previous question precludes the application of various motions to dispose of the pending matter, including the motion to table (5 Hinds §§ 5412–5422; 8 Cannon § 2655), the motion to postpone (5 Hinds §§ 5319–5321; 8 Cannon §§ 2609, 2616, 2617), and a motion in the House to strike out the enacting clause (Deschler Ch 23 § 15.13).

Where a special order providing for the consideration of a matter states that the previous question shall be considered as ordered thereon without intervening motion, and does not simply state that the previous question be considered as ordered after debate, the previous question is considered as ordered from the beginning of the debate, precluding the consideration of any intervening motion, such as the motion to postpone. 96–2, Mar. 12, 1980, p 5388.

§ 10. — On Debate Generally

Effect of Demand

Where the previous question is moved on a proposition, no further debate on it is in order unless the previous question is rejected when the House votes on the motion. Deschler Ch 23 § 15.1. All incidental questions—except questions of privilege (3 Hinds § 2532)—are likewise decided without debate (5 Hinds §§ 5448, 5449). While the Chair has on rare occasions entertained a parliamentary inquiry following the demand for the previous question, an inquiry directed to the Member holding the floor is in the nature of debate and is not in order. 5 Hinds § 5481. The demand precludes further debate even on questions requiring a two-thirds vote for passage, such as overriding a Presidential veto. Deschler Ch 23 § 15.2.

Effect of Adoption

The ordering of the previous question on a proposition under debate has the effect of terminating that debate. 5 Hinds §§ 5443, 5444; 8 Cannon § 2662. The reading of a report or other paper, being in the nature of debate, is not in order thereafter. 5 Hinds §§ 5294, 5296. The proponent's right to close debate is likewise precluded. 5 Hinds §§ 4997–5000. Propositions on which pending debate has been terminated by the motion include: an amendment offered to a resolution reported by the Committee on Rules (Deschler Ch 23 § 15.10), an amendment in the nature of a substitute (Deschler Ch 23 § 15.11), and a motion to dispose of an amendment in disagreement between the Houses (Deschler Ch 23 § 15.8). But a question involving the privileges of the House (3 Hinds § 2532) may intervene and may be debated

notwithstanding the ordering of the previous question on a pending proposition.

Effect of Special Rule Ordering the Previous Question

When a bill is reported to the House from the Committee of the Whole pursuant to a resolution providing that the previous question ''shall be considered as ordered,'' further debate in the House is precluded. Deschler Ch 23 § 15.18. However, 10 minutes' debate on a motion to recommit with instructions still would be in order. See Deschler Ch 23 § 15.

§ 11. — On Divided Debate

Generally

As noted elsewhere, debate is sometimes divided by rule between a proponent and an opponent, such as under the 40-minute rule. See CONSIDERATION AND DEBATE. Where under a rule of the House debate time on a motion or proposition is equally divided and controlled by the majority and the minority, or between those in favor and those opposed, the previous question may not be moved until the other side has used or yielded back its time; on occasion, the Chair has vacated the adoption of the previous question where it was improperly moved while the other side was still seeking time. 101–1, Oct. 3, 1989, p ____.

Forty-minute Debate

An exception to the rule that the previous question cuts off debate is found in Rule XXVII clause 3. It allows 40 minutes of debate where the previous question is ordered on a debatable proposition which has not in fact been debated. *Manual* § 907. This rule was adopted in 1880 to prevent passing measures without a word of debate, a frequent practice prior to that time. 5 Hinds § 6821. The right to 40 minutes of debate accrues only if the previous question is in fact ordered, not merely moved. Deschler Ch 23 § 21.4. But the 40 minutes' debate time must be demanded before the House begins to vote on the main question. 5 Hinds § 5496.

The debate time under the 40-minute rule is divided between the Member demanding the time and a Member who represents the opposing view of the matter. Deschler Ch 23 § 21.2. If, after recognition of two Members under the 40-minute rule, it appears that both Members favor the proposition, the Speaker may require that each yield half of his time to those opposing the motion. 8 Cannon § 2689.

The 40-minute rule stipulates that it is applicable to ''a debatable proposition on which there has been no debate.'' Rule XXVII clause 3 (*Manual* § 907). If there has been any debate at all prior to the ordering of the pre-

vious question (5 Hinds §§ 5499–5501), and such debate was on the merits of the pending proposition (5 Hinds § 5502), the 40 minutes of debate permitted by the rule cannot be claimed. That time may not be demanded on a proposition which has been debated in the Committee of the Whole. 5 Hinds § 5505. The 40-minute rule does not apply to propositions which are themselves not debatable, such as a motion to close debate. 8 Cannon §§ 2555, 2690; Deschler Ch 23 § 21.7.

The word ''proposition'' in the 40-minute rule refers to the bill or other main question, and does not refer to incidental motions, such as a motion to recommit the bill. 5 Hinds § 5497. ''Debate'' means debate on the bill or other main proposition and not on something incidentally connected therewith, such as a concurrent resolution correcting an error in the section numbers of the bill. 5 Hinds § 5508.

The 40 minutes of debate may be claimed where the previous question has been moved on an amendment which has not been debated either in the House or in the Committee of the Whole. 5 Hinds § 5503. But the 40 minutes of debate time may not be claimed with respect to an undebated amendment if the previous question was moved both on the undebated amendment and the main proposition, if the main proposition has been debated. 5 Hinds § 5504.

The 40-minute rule does not apply at the inception of a Congress prior to the adoption of rules. 5 Hinds § 5509; Deschler Ch 23 § 21.6.

§ 12. — On Amendments

After the previous question has been moved on a proposition, it is not subject to further amendment unless the motion is rejected by the House. Deschler Ch 23 § 15.5; 89–1, Jan. 4, 1965, p 19. If the House agrees to the motion and thereby orders the previous question, no further amendments to the proposition may be considered (90–1, Jan. 10, 1967, pp 31–33; 93–1, June 13, 1973, pp 19337–44), except for an amendment coming before the House pursuant to a motion to commit with instructions (§ 13, infra).

The motion for the previous question is not used in the Committee of the Whole, but is applicable to the work product of the committee.

The previous question is an essential tool of the proponent of a proposition. Amendments to a pending motion are precluded when the previous question is ordered on the motion (8 Cannon § 3231; 95–2, Feb. 22, 1978, p 4074), even if the motion is not subject to debate. 5 Hinds §§ 5473, 5490. Thus, the previous question may be applied in the House to the nondebatable motion to limit general debate in Committee of the Whole, in order to prevent amendment. 5 Hinds § 5473.

Where the previous question has been ordered on a special order reported by the Committee on Rules (Deschler Ch 23 § 15.14) or on a motion to recommit with instructions (8 Cannon §§ 2698, 2712, 3241), amendments are precluded.

Although unanimous consent may be granted for the consideration of an amendment even though the previous question has been ordered (Deschler Ch 23 § 14.13), the Speaker may decline to entertain unanimous-consent requests for that purpose (Deschler Ch 23 § 15.18).

Where the previous question is ordered on some amendments reported from the Committee of the Whole, they must be disposed of before further consideration of the remaining amendments may be had. Deschler Ch 23 § 15.19.

The foreclosure of amendments also results where the House has adopted and is operating pursuant to a special order providing that the previous question is ''considered as ordered.'' Deschler Ch 23 §§ 15.15, 15.16.

§ 13. Recommittal

Generally

The rule providing for the previous question authorizes the Speaker, pending the motion for or even after the ordering of the previous question, to entertain a motion to recommit the pending bill to a committee. Rule XVII clause 1 (*Manual* § 804). This provision was adopted in 1880 so as to afford ''the amplest opportunity to test the sense of the House as to whether or not the bill is in the exact form it desires.'' 5 Hinds § 5443.

Amendment and Debate

Contrary to the early practice (2 Hinds § 1456), the opponents of the bill are entitled to prior recognition to move to refer it to a committee (*Manual* § 808). The motion to commit under this rule may be amended, as by adding instructions, unless such amendment is precluded by moving the previous question on the motion (5 Hinds §§ 5582–5584; 8 Cannon § 2695).

Recommittal motions with instructions commonly provide that the committee report ''forthwith.'' If the recommittal motion is adopted, the committee chairman immediately reports to the House in conformity with the instructions, and the bill, as modified, is automatically before the House again. The House votes separately on this amendment, and this amendment is not subject to further amendment if the previous question is ordered thereon. The previous question when ordered on the bill and which ''triggers'' the motion to recommit, continues in force until final disposition of the bill and is not vitiated by its recommitment. Thus, where the previous question

is moved on a resolution and an amendment thereto, and the House orders it recommitted with instructions to report with an amendment forthwith, the previous question remains operative to bar a subsequent amendment. 8 Cannon § 2677.

It has been held that the motion to recommit under Rule XVII may not be applied solely to an amendment to a measure—that the motion must be applied to the amendment and to the main proposition. 5 Hinds § 5573.

Recommittal Pending Final Passage

The motion to recommit a bill or joint resolution after the previous question has been ordered on the question of final passage is authorized by Rule XVI clause 4. *Manual* § 782. The Committee on Rules is precluded by Rule XI clause 4(b) from reporting a special order which would prevent the motion to recommit from being made as so authorized. *Manual* § 729a. The rule prohibiting special orders that wholly preclude the motion to recommit under Rule XVI clause 4 does not apply to special orders restricting the recommittal of simple or concurrent resolutions. See 100–2, May 4, 1988, p 9865. See REFER AND RECOMMIT.

§ 14. Reconsideration

The vote on the ordering of the previous question on a measure is subject to one motion to reconsider. 5 Hinds § 5655. However, a motion to reconsider that vote may not be entertained if the House has partially executed that order, as by voting on an amendment. 5 Hinds §§ 5653, 5654.

A motion to reconsider a vote on a proposition may be made after the previous question has been demanded on the proposition (5 Hinds § 5656) or even after it has been ordered and while it is operating (5 Hinds §§ 5657–5662; *Manual* § 814). Under the modern practice, where the House votes to reconsider a proposition on which the previous question was operating when first voted on, no debate is in order except by unanimous consent, 96–2, May 29, 1980, pp 12663–66; 96–2, July 2, 1980, p 18356.

§ 15. Rejection of Motion—As Permitting Further Consideration

Generally

The defeat of the motion for the previous question on a pending proposition ordinarily opens up that proposition to further consideration, amendment, and debate. Deschler Ch 23 §§ 22.1–22.5; 90–1, Mar. 9, 1967, pp 6035–42, 6048; 91–1, Oct. 8, 1969, p 29219. However, the rejection of the motion for the previous question on a measure that is not subject to amendment does not open the measure to amendment but only extends the time

for debate thereon. 95–1, Nov. 2, 1977, p 36613. Similarly, if a pending proposition is not debatable, but is vulnerable to an amendment, the defeat of the previous question does not provide debate time but only the opportunity for amendment. Deschler Ch 23 § 22.8.

Motions

The rejection of the previous question opens up the pending proposition to further consideration and amendment where the pending proposition is a motion, such as a motion to instruct conferees (Deschler Ch 23 § 22.12), a motion to recede and concur in a Senate amendment (Deschler Ch 23 § 22.13), or to a motion to recommit a conference report (Deschler Ch 23 § 22.16). But the voting down of the previous question on a conference report merely extends the time for debate and does not afford an opportunity to amend the report. Deschler Ch 23 § 22.15.

§ 16. — As Affecting Recognition

If the previous question is voted down on a proposition, recognition passes to an opponent of the proposition. Deschler Ch 23 §§ 23.1, 23.5. Thus, the previous question on a resolution being voted down, the Speaker may recognize a Member opposed to the resolution (Deschler Ch 23 §§ 23.2, 23.5), who may offer an amendment and be recognized for one hour (96–1, June 13, 1979, pp 14650, 14651). The recognition of the Member is not precluded by the fact that he has been previously recognized to offer an amendment. Deschler Ch 23 § 23.4.

The practice of bestowing recognition on a Member ''leading the opposition'' upon rejection of the previous question is applied to a resolution from the Committee on Rules (Deschler Ch 23 § 23.6) and to a motion to instruct conferees (Deschler Ch 23 § 23.7).

In recognizing one of the leaders of the opposition when the previous question is rejected, the Chair gives preference to a Member of the minority if he actively opposed ordering the previous question. Deschler Ch 23 § 23.1. But where no minority member so qualified seeks recognition, a majority member who opposed the previous question on the pending proposition may be recognized. Deschler Ch 23 § 23.8.

§ 17. Effect of Adjournment When Previous Question Pending

If the House adjourns without voting on a proposition on which the previous question has been ordered, the question comes up on the next legislative day. 8 Cannon §§ 2693, 2694; Deschler Ch 23 §§ 15.22, 24.2. The proposition is taken up as unfinished business (Deschler Ch 23 § 24.2) imme-

diately after disposal of business on the Speaker's table (5 Hinds §§ 5510–5517; 8 Cannon § 2674). Bills coming over from a previous day with the previous question ordered thereon have precedence in the order in which the several motions for the previous question were made. 5 Hinds § 5518. A proposition coming over from the preceding day with the previous question ordered thereon has been held to take precedence over a motion for the disposition of a veto message from the President (8 Cannon § 2693) and takes precedence over a motion to go into the Committee of the Whole for the consideration of a bill privileged by special order (8 Cannon § 2674). Generally, see UNFINISHED BUSINESS.

Private Calendar

Research References
4 Hinds §§ 3266–3303
7 Cannon §§ 846–871
7 Deschler Ch 22 §§ 10–14
Manual §§ 893–895

§ 1. In General

Usage and Purpose; Referrals to the Calendar

The Private Calendar is used to facilitate the consideration of bills which are limited in their applicability to particular individuals or entities. Deschler Ch 22 § 10.

A formal calendar for private bills was established by rule during the Sixty-second Congress (1911–1912). Prior to this time, private bills had been considered pursuant to special rules from the Committee on Rules. *Manual* § 894. Today, private bills when favorably reported are delivered to the Clerk for reference to the Private Calendar under the direction of the Speaker. *Manual* §§ 742, 743. A private bill erroneously referred to the Union Calendar may be re-referred to the Private Calendar by direction of the Speaker. 7 Cannon § 859.

Measures Eligible

Resolutions as well as bills may be considered pursuant to the Private Calendar rule. Rule XXIV clause 6. The use of omnibus private bills—that is, the consolidation into one bill of numerous private bills which have been objected to by two or more Members when first called on the Calendar—has been permitted under the rules since 1935. *Manual* § 893. The validity of this consolidation procedure has been sustained. Deschler Ch 22 § 13.1.

Clause 2 of Rule XXII prohibits the introduction of certain private bills. See BILLS.

§ 2. Calling the Calendar; When in Order

The Private Calendar is called up on the first and third Tuesdays of the month after the disposal of ''such business on the Speaker's table as requires reference only. . . .'' *Manual* § 893. The calling of the calendar is mandatory on the first Tuesday, unless specifically dispensed with by the House, and discretionary with the Speaker on the third Tuesday. Deschler Ch 22 § 11.

On the first Tuesday of the month, after disposition of matters requiring referral, the Speaker has recognized a Member to call up a conference report (89–1, Aug. 3, 1965, pp 19187–91) and for a motion for a call of the House (100–1, July 8, 1987, p 18972), and for unanimous-consent requests (92–2, Aug. 1, 1972, p 26151) before beginning the call.

But the call has been entertained before the Speaker recognized for a privileged motion to discharge a committee from a resolution of inquiry (92–1, Aug. 3, 1971, pp 29060–64) and before the consideration of a veto message carried over as unfinished business (94–1, Oct. 7, 1975, pp 32036–41).

On the third Tuesday, since the call is discretionary, the Speaker may entertain both unanimous-consent requests for business not otherwise privileged (89–1, Aug. 3, 1965, p 19202; 91–2, Nov. 17, 1970, p 37654) and the call does not displace other privileged business (Deschler Ch 22 § 11.3).

§ 3. Waivers; Dispensing With the Call

Deviations from the Private Calendar rule have been permitted by special order or by unanimous consent. By such means the House may:

- Permit a private bill to be considered at a time other than that specified by the rule. Deschler Ch 22 §§ 11.5–11.7.
- Transfer the entire calendar to days other than those specified. Deschler Ch 22 § 11.8.
- Dispense with the calendar altogether during a particular week. 88–2, Jan. 31, 1964, p 1552.
- Take up other specified business during the time for the call of the calendar. Deschler Ch 22 § 11.11.
- Recommit a private bill on the calendar to committee. Deschler Ch 22 §§ 12.4–12.7.

- Restore to the calendar measures stricken therefrom. Deschler Ch 22 §§ 12.13–12.15.
- Rescind actions previously taken in connection with the calendar. Deschler Ch 22 §§ 12.16, 12.17.

The rules specifically provide for a motion to dispense with the call of the Private Calendar, by a two-thirds vote, on the first Tuesday of each month. *Manual* § 893. See also Deschler Ch 22 § 11.1. A motion to dispense with the call of the calendar on the third Tuesday of each month is likewise in order, the call of the calendar being within the discretion of the Chair. 97–1, Nov. 17, 1981, p 2770; *Manual* § 895.

§ 4. Objections; Screening Procedures

Where a bill is called on the Private Calendar on the first Tuesday of the month and it is objected to by two or more Members it is automatically recommitted to the committee reporting it. See clause 6, Rule XXIV, and 92–1, Apr. 6, 1971, p 9747. On the third Tuesday of each month the same procedure is followed with the exception that omnibus private bills (see § 6, infra) are in order regardless of objection. See clause 6, Rule XXIV, and 92–1, Apr. 6, 1971, p 9747.

The Majority Leader and the Minority Leader each appoint three Members to serve as Private Calendar objectors during a Congress. 103–1, Aug. 2, 1993, p ____. These official objectors screen all bills which are placed on the calendar. When the calendar is called, the objectors are on the floor ready to oppose the consideration of any private bill which they feel is objectionable for any reason. 89–1, Mar. 2, 1965, p 3914. See also Deschler Ch 22 §§ 12.2, 12.3. In addition, the objectors may adopt and announce specific criteria which must be satisfied if a private bill is to be called up for consideration on the calendar. Thus, the objectors may require that a measure be on the calendar for at least seven days before being considered. Deschler Ch 22 § 12.1.

Forms

THE SPEAKER: This is the day for the call of the Private Calendar. The Clerk will call the first bill on the Private Calendar.

[*The Clerk calls the first bill by calendar number and title.*]

THE SPEAKER: Is there objection to the consideration of the bill?. . .The Chair hears none. The Clerk will report the committee amendments. [*The Clerk reads the amendments.*]

THE SPEAKER: Without objection, the amendments are agreed to, the House bill is engrossed, read a third time and passed, and a motion to reconsider is laid on the table.

[*Or*]

(*If at least two Members object*) THE SPEAKER: Two objections are heard, and the bill is recommitted.

§ 5. Consideration and Debate

Bills

Private bills called up from the Private Calendar are considered in the House *as in* the Committee of the Whole. *Manual* § 893. Debate on bills in that forum is under the five-minute rule. However, where a private bill is considered independently of the Calendar, pursuant to a special rule from the Committee on Rules, the House may provide for consideration in the Committee of the Whole. Deschler Ch 22 § 11.5. If, by unanimous consent, a private bill is being considered in the House, the Member making the unanimous-consent request is recognized for one hour. Deschler Ch 22 § 13.6.

Amendments

Amendments to bills called on the Private Calendar are debated under the five-minute rule with debate limited to five minutes in favor of and five minutes in opposition to an amendment. 90–1, Dec. 14, 1967, p 36535; Deschler Ch 22 § 13.2. Recognition in opposition to such an amendment goes first to a Member of the committee reporting the bill. 90–1, Dec. 14, 1967, p 36535. Recognition of Members seeking to extend the debate time will ordinarily be declined. Deschler Ch 22 §§ 13.4, 13.5. *Pro forma* amendments are not in order (Deschler Ch 22 §§ 13.13–13.17), and the reservation of an objection is not permitted during the call. Deschler Ch 22 § 12.9.

Motions to Strike the Enacting Clause

A motion to strike the enacting clause is in order during the consideration of a private bill (8 Cannon § 2786), including an omnibus private bill (Deschler Ch 22 § 13.10); such motion takes precedence over an amendment to strike out a title of the bill (Deschler Ch 22 § 13.11), and is debatable under the five-minute rule (Deschler Ch 22 § 13.12).

Passing Over Calendared Measures

It is in order to ask unanimous consent that a bill be passed over without prejudice. Deschler Ch 22 §§ 12.4–12.7. If granted, the bill retains its place on the Calendar. A request that the bill be passed over comes too late after committee amendments to the bill have been adopted. 96–1, Dec. 18, 1979, pp 36758, 36759.

Forms

THE SPEAKER: Today is the day for the call of the Private Calendar. The Clerk will call the first bill on the Private Calendar.

[*The Clerk calls the first bill by calendar number and title.*]

MEMBER: Mr. Speaker, I ask unanimous consent that this bill be passed over without prejudice.

MEMBER: Mr. Speaker, I object and ask that this bill be now considered.

THE SPEAKER: Objection is heard to passing the bill over. Is there objection to the present consideration of the bill?. . . Two objections are heard, and under the rule the bill is recommitted to the Committee on _____.

§ 6. Omnibus Private Bills

Generally

Omnibus private bills are numerous private bills consisting of individual private bills on the Calendar previously recommitted after two objections, re-reported and grouped together under a single bill number for consideration and passage. They are in order on the third Tuesday and are not in order on the first Tuesday (Deschler Ch 22 § 11) except by unanimous consent (Deschler Ch 22 § 11.2). If an omnibus bill is passed, it is resolved into individual bills for transmittal to the Senate and subsequently to the President. *Manual* § 895.

Consideration and Debate

Omnibus private bills have preference over individual private bills on the calendar on the third Tuesday. Deschler Ch 22 § 11.4. Such bills are read by paragraph, and no amendments are entertained except to strike out or reduce monetary amounts or provide limitations. Matters so stricken out may not again be included in an omnibus bill during the session. *Manual* § 893. Debate is limited to motions allowable under the rule, and does not admit motions to strike out the last word or reservation of objections. See 92–1, Apr. 6, 1971, p 9747. Debate on a permissible motion is under the five-minute rule. 90–2, Sept. 17, 1968, p 27165.

Striking Part of Omnibus Bill

Where an omnibus private bill improperly includes an individual private bill previously laid on the table, the Chair on presentation of a point of order may order the individual bill stricken from the omnibus bill. Deschler Ch 22 § 13.18.

§ 7. Disposition of Unfinished Business

Private Calendar bills unfinished on one Tuesday go over to the next Tuesday on which such bills are in order (7 Cannon § 854), and are considered before the call of the other bills on the calendar. Unfinished omnibus bills follow the same procedure and go over until the next Tuesday on which that class of business is again in order. Deschler Ch 22 § 11.13. However, when the previous question is ordered on a private bill, and the bill remains unfinished at adjournment, the bill comes up for disposition on the next legislative day. See 92–1, Apr. 6, 1971, p 9747. See also 8 Cannon §§ 2334, 2694.

§ 8. House-Senate Action on Private Bills

Private Calendar bills after passage by the House are messaged to the Senate just as are public bills and are subject to amendment. If amended by the Senate, further consideration and disposition by the House is effected by unanimous consent, a special rule, or by a motion to suspend the rules. The House has by motion suspended the rules and adopted a resolution agreeing to a private bill with an unrelated Senate amendment of a public character. Deschler Ch 22 § 14.7. This is an exception from the general practice that the Speaker will not schedule private bills under suspension of the rules. Omnibus bills on their passage are resolved into several separate bills of which they are composed, and are messaged to the Senate as individual bills and not as an omnibus bill. *Manual* § 893; Deschler Ch 22 § 14.1.

After passage in the House of an omnibus private bill, Senate bills pending on the Speaker's table which are identical or similar to those contained therein may be disposed of in the House by unanimous consent. Similarly, after disposition in the House of a private Senate bill, a similar House bill may be disposed of by unanimous consent. This procedure is followed so that two measures involving the same private relief will not be messaged to the Senate. Deschler Ch 22 § 14.3. This problem may also be addressed by a special rule from the Committee on Rules. Deschler Ch 22 § 14.6.

Question of Consideration

Research References
5 Hinds §§ 4936–4977
8 Cannon §§ 2436–2447
Manual §§ 778–781a
Deschler-Brown Ch 29

§ 1. In General

Generally; Purpose and Effect

The question of consideration is one of the methods available to the House that enables it to determine its agenda on a particular day. The rules provide that when any motion or proposition is made, a Member may demand the question ''[w]ill the House now consider it?'' Rule XVI clause 3. *Manual* § 778. This rule, which was adopted in its present form in 1880 (5 Hinds § 4936), permits the House, by simple majority vote, to protect itself on any day against business it may not want to consider on that day. 8 Cannon § 2447. The rule itself provides that the question is not to be put unless demanded. *Manual* § 778.

Any Member may raise the question of consideration (5 Hinds § 4936), even against matters of the highest privilege (5 Hinds § 4941), and notwithstanding that the Member in charge claims the floor for debate (5 Hinds §§ 4944, 4945; 6 Cannon § 404) or to move the previous question (5 Hinds § 5478). The question of consideration is not debatable (8 Cannon § 2447); such debate would defeat the purpose of the rule. If the House votes against consideration, it has the effect of preventing all debate on the pending measure at that time.

Form

MEMBER: Mr. Speaker, I raise the question of consideration.

THE SPEAKER: The gentleman raises the question of consideration. The question is, Will the House now consider it [the motion or proposition]? As many as favor _____.

Where a report from the Committee on Rules is called up on the same legislative day on which reported, the Chair does put the question: ''The

question is, will the House now consider the resolution.'' See Rule XI clause 4(b).

When In Order

The question of consideration may be raised against a proposition after it has been read but before debate on it is to begin. 8 Cannon § 2447. The question of consideration is not in order after debate has begun (5 Hinds §§ 4937–4939) and does not lie until the initial reading has been concluded. 6 Cannon § 541; 8 Cannon § 2436. It may not be raised after the previous question has been ordered. 5 Hinds §§ 4965, 4966.

Voting on the Question

A negative vote on the question of consideration does not amount to a rejection of the proposition and does not prevent the measure from being brought before the House again at some later time. 5 Hinds § 4940. By the same token, an affirmative vote does not prevent the question of consideration from being raised on a subsequent day when the bill is again called up as unfinished business. 8 Cannon § 2438. If the question of consideration is raised but not voted on at adjournment it does not recur as unfinished business on the succeeding day. 5 Hinds §§ 4947, 4948.

It is in order to reconsider an affirmative vote on the question of consideration. 103–2, Oct. 4, 1994, p ____. The vote on the question of consideration, if decided in the negative, may not be reconsidered. 5 Hinds §§ 5626, 5627.

As Related to Points of Order

The House having decided to consider, a point of order raised against the pending matter with the object of preventing consideration, in whole or part, may be deemed untimely. 4 Hinds § 4598; 5 Hinds § 4952. In one instance, the House having given unanimous consent for the consideration of a measure with a proposed committee amendment, this action was held to be in effect an affirmative decision on the question of consideration, thus precluding a point of order against the amendment. 5 Hinds § 4952. Under the modern practice, however, unanimous consent for consideration of a bill, unless specifically including committee amendments, would not preclude a point of order against the committee amendments when separately reported.

A point of order against the eligibility for consideration of a bill which, if sustained, might prevent consideration, should be made and decided before the question of consideration is put. *Manual* § 781. But if the point relates merely to the manner of considering the bill, the point should be passed on after the House has decided the question of consideration. 5 Hinds

§ 4950. Points of order against a conference report are raised after the question of consideration has been decided in the affirmative. 94–2, Sept. 28, 1976, p 33019. See also Deschler Ch 20, § 17.13, where a point of order against consideration of a bill for failure of a committee quorum to report was permitted despite unanimous consent of the House to consider the bill, where the unanimous-consent request was not accompanied by a waiver of points of order.

Other Methods of Preventing Consideration

Immediate consideration of a measure can be avoided by use of the motions to postpone or to refer. (See *Manual* §§ 785–787.) Successful application of the motion to lay the measure on the table constitutes a final adverse disposition of the matter before the House (see LAY ON THE TABLE).

§ 2. Propositions Subject to the Question

The question of consideration has been applied to bills, resolutions, motions, and reports, and extends even to propositions of highest privilege. 5 Hinds § 4941; *Manual* § 780. The question may be demanded:

- Against a committee report relating to the seating of a Member. 5 Hinds § 4941.
- Against a resolution raising a question of the privilege of the House. 6 Cannon § 560.
- Against a bill which has been made in order on a particular day by a special order. 4 Hinds § 3175; 5 Hinds §§ 4953–4957.
- Against a bill on the Union Calendar on Calendar Wednesday before resolving into the Committee of the Whole. 8 Cannon § 2445.
- Against the motion to reconsider. 8 Cannon § 2437.
- Against a conference report. 8 Cannon § 2439; 94–2, Sept. 28, 1976, p 33019.

§ 3. Propositions Not Subject to the Question

The question of consideration lies only against an individual proposition, and may not be raised against a general class of business (5 Hinds § 4598) such as District of Columbia business generally (4 Hinds §§ 3308, 3309).

Some legislative propositions are considered under special rules which provide for the ''immediate consideration'' of the proposition. Under that procedure, the House votes on the question of consideration by voting on the resolution itself. For this reason, the question of consideration cannot be raised against such propositions. 5 Hinds §§ 4960–4963; 8 Cannon §§ 2440, 2441. The question of consideration is likewise inapplicable to a motion to

resolve into the Committee of the Whole, since the House expresses its will concerning consideration by voting on the motion. 85–2, May 21, 1958, p 9216; *Manual* § 780. Under modern practice, special rules authorize the Speaker to declare the House resolved into Committee of the Whole without motion, thereby precluding the question of consideration or any vote of the House. See Rule XXIII clause 1(b); *Manual* § 862.

Other propositions held not subject to the question of consideration include:

- A bill returned with the President's veto. 5 Hinds §§ 4969, 4970.
- A motion relating to the order of business. 5 Hinds §§ 4971–4976; 8 Cannon § 2442.
- A motion to discharge committees. 5 Hinds § 4977.
- Propositions before the House merely for reference. 5 Hinds § 4964.
- A motion to take from the Speaker's table a Senate bill substantially the same as a House bill already favorably reported and on the House Calendar. 8 Cannon § 2443.
- Reports from the Committee on Rules relating to the rules or order of business. Rule XI clause 4(b). *Manual* § 729a. See also 5 Hinds §§ 4961–4963.

§ 4. Application to Points of Order Against Unfunded Mandates

The Unfunded Mandates Reform Act of 1995 (Pub. L. No. 104–4) became effective January 1, 1996. The Act amends Title IV of the Congressional Budget Act and establishes committee report requirements and points of order against consideration. Section 423 and section 424 of the Congressional Budget Act establish committee report requirements. Section 425 and section 426 establish points of order against consideration.

Section 425(a)(2) establishes a point of order against any bill, joint resolution, amendment, motion, or conference report that would increase the direct costs of federal intergovernmental mandates by an amount that exceeds the $50 million threshold in section 424(a)(1) unless it also provides spending authority or authorizes sufficient appropriations to cover the costs. Section 426(a) of the Act establishes a point of order against consideration of any rule or order that waives the application of section 425. Points of order under sections 425 and 426(a) of the Budget Act are disposed of not by a ruling of the Chair but by raising the question of consideration. Section 426(b)(2) establishes as a threshold premise for cognizability as a point of order under section 425 or 426(a) the specification of precise legislative language that is alleged to constitute a federal mandate.

Form

The gentleman from _____ makes a point of order that the resolution (H. Res. ____) violates section 426(a) of the Congressional Budget Act of 1974 by waiving all points of order (therefore necessarily including the application of section 425 of that Act) during the consideration of H.R. ____. In accordance with section 426(b)(2) of the Act, the gentleman has met his threshold burden to identify the language of the resolution that has that effect. Under section 426(b)(4) of the Act, the gentleman from _____ and a Member opposed will each control 10 minutes of debate on the point of order. Pursuant to section 426(b)(3) of the Act, after debate on the point of order the Chair will put the question of consideration, to wit: ''Will the House now consider the resolution?''

Questions of Privilege

I. Introductory

II. Privilege of the House

A. Basis of Privilege

B. Consideration

III. Personal Privilege

A. Basis of Privilege

B. Consideration and Debate

Research References
3 Hinds §§ 2521–2725
6 Cannon §§ 553–622
3 Deschler Ch 11
Manual §§ 661–668

I. Introductory

§ 1. In General

Definitions and Distinctions

The term ''privilege'' arises frequently in the rules governing the procedures of the House. It may refer to questions of the privilege of the House, to questions of personal privilege, to the privilege of Members from arrest, and to the privilege of certain motions. This chapter focuses primarily on questions of the privilege of the House and on questions of personal privilege.

Questions of privilege are classified by a House rule as (1) those affecting the rights of the House collectively, its safety, dignity, and the integrity of its proceedings, and (2) the rights, reputation, and conduct of Members, individually, in their representative capacity only. See Rule IX. This rule, adopted in 1880, was based on procedures that had been followed in the House as a matter of longstanding custom. 3 Hinds §§ 2521 *et seq.* The rule was amended in the 103d Congress to permit the Speaker to postpone consideration of certain questions of privilege for up to two legislative days and to designate a time for consideration within that time frame. See § 16, infra.

Questions of the privilege of the House are brought before it in the form of a resolution (§ 16, infra), whereas questions of personal privilege are raised by a Member from the floor on being recognized for that purpose (§ 21, infra).

Questions of privilege are to be distinguished from privileged questions. The latter relate merely to the order or priority of business under the rules of the House, while the former pertain to the safety and dignity of the House or the integrity of its proceedings, or to the rights or reputation of its Members (3 Hinds §§ 2654, 2718). Privileged questions, see ORDER OF BUSINESS.

Privilege of Members From Arrest

Under the Constitution, Senators and Representatives are privileged from arrest, except for ''treason, felony, and breach of the peace,'' during attendance at a session and in going to and returning therefrom. U.S. Const.

art. I § 6. This privilege may be invoked in cases not covered by the exceptions, as where there has been an arrest for fraud and delinquency in connection with a debt. 3 Hinds § 2676. The constitutional language excepting ''treason, felony, and breach of the peace'' is construed to mean all indictable crimes (3 Hinds § 2673), and indeed the privilege does not apply so as to protect a Member from arrest in any criminal case (*Manual* § 91). Thus, a Member may be arrested and prosecuted for a felony specified in a timber protection statute, and the fact that Congress was in recess at the time of his arrest is no defense. *Williamson* v *United States*, 207 US 425 (1908). An investigation by committee of a Member's arrest to determine whether it was in violation of the privilege may be initiated by resolution. 3 Hinds § 2673. For more detailed analysis of this privilege, see Deschler Ch 7 § 18.

Privilege of Speech and Debate

The Constitution (art. I § 6 clause 1) provides that Members or Senators ''shall not be questioned in any other place'' for ''any speech or debate in either House.'' This clause precludes judicial inquiry into the motivation, preparation, and content of a Member's speech. *Manual* § 93. All speech, debate, and remarks on the floor are privileged, as is material inserted in the Record by a Member with the consent of the House. Deschler Ch 7 § 16. But the Supreme Court has circumscribed the protection provided under the clause by upholding a grand jury inquiry into the possession and nonlegislative use of classified documents by a Member. *Gravel* v *United States*, 408 U.S. 606 (1972). The Court has also sustained the validity of an indictment of a Member for accepting an illegal bribe to perform legislative acts. *United States* v *Brewster*, 408 U.S. 501 (1972). This clause does not prevent the House from applying rules relating to ''proper debate'' and from adopting procedures to deal with transgressions of those rules. 104–1, May 25, 1995, p ____.

§ 2. Precedence of Questions of Privilege

A question of privilege has been held to take precedence over all questions except the motion to adjourn. This precedence is given to both questions of the privileges of the House (Rule IX clause 2(a)) and to questions of personal privilege (Rule IX clause 2(b)) under the applicable House rule. ''The rights and privileges of the Members of the House, in the discharge of their functions, are sacred,'' said Speaker Reed in 1890, ''and the House can undertake no higher duty than the conservation of those rights and privileges. Even if the case arises under dubious circumstances, it is proper for

the House to pause and give suitable heed to any question which any Member raises with regard to his rights and privileges as a Member.'' 3 Hinds § 2524. The House has, since the 103d Congress, restricted the right to bring a question of privilege before the House without notice (see Rule IX clause 2; *Manual* § 661a). Only the Majority and Minority Leaders can now raise such a question ''at any time.'' See § 16, infra.

Questions of privilege have been held to take precedence over other business (3 Hinds § 2523), including:

- The reading of messages from the President; such messages are received but do not displace the question of privilege (5 Hinds §§ 6640–6642).
- District of Columbia business under Rule XXIV clause 8 (Deschler Ch 11 § 5.8).
- Business in order on Calendar Wednesday (7 Cannon §§ 908–910; Deschler Ch 11 § 5.7).
- Special orders for the consideration of business (3 Hinds §§ 2524, 2525, 2554).
- Reports from the Committee on Rules (8 Cannon § 3491).
- A motion to resolve into Committee of the Whole (8 Cannon § 3461).
- Motions to reconsider (5 Hinds §§ 5673–5676).
- Suspension of the rules (3 Hinds § 2553; 6 Cannon §§ 553, 565).
- Scheduled special-order speeches (96–1, Sept. 21, 1979, p 25656).
- Senate amendments undisposed of after rejection of a conference report (3 Hinds § 2531).

In general, one question of privilege may not take precedence over another (3 Hinds §§ 2534, 2552, 2581), and the Chair's power of recognition (and his scheduling prerogative under Rule IX) determine which of two matters of equal privilege is considered first (101–2, July 24, 1990, p ____). A question of personal privilege may not be raised while a question of the privileges of the House is pending. 99–1, Apr. 30, 1985, p 9808; 99–1, May 1, 1985, p 10003.

Precedence Over the Previous Question; Interruptions

A Member may be recognized to offer a resolution asserting a question of privilege before another Member moves the previous question on a bill. 92–2, May 24, 1972, p 18675. The question of privilege takes precedence over the consideration of a motion for the previous question (Deschler Ch 11 § 5.9), and over certain propositions on which the previous question has been ordered. 3 Hinds § 2532; 6 Cannon § 561. The question of privilege supersedes the consideration of the proposition and must be disposed of first. 3 Hinds § 2522; Deschler Ch 11 § 5.3. It loses its privilege, however, when connected with or amended by a proposition not privileged. 3 Hinds § 2551; 5 Hinds § 5890. Moreover, since only one question of privilege may

be pending at a time (3 Hinds § 2533), another Member will not be recognized during such time to present another question of privilege (Deschler Ch 11 § 5.4).

A Member by rising to a question of privilege may not deprive another Member of the floor (5 Hinds § 5002; 8 Cannon §§ 2458, 2528; Deschler Ch 11 § 23.2), although the latter may yield him time for preliminary debate on the question (Deschler Ch 11 § 23.3). Such a question may not interrupt a roll call or yea-and-nay vote. 5 Hinds §§ 6051, 6052, 6058; 6 Cannon §§ 554, 564.

A question of privilege may interrupt the consideration of a bill under a special order (3 Hinds §§ 2524, 2525) or a rule providing for a vote without intervening business (6 Cannon § 560). A question of the privilege of the House may interrupt the reading of the Journal (Deschler Ch 11 § 5.6), whereas a question of personal privilege may not (Deschler Ch 11 § 23.1).

As Unfinished Business

A question of privilege pending at the time of adjournment becomes the unfinished business on the next day (Deschler Ch 11 § 5.5), and takes precedence over unfinished business which is privileged under Rule XXIV clause 1 (order of business). 94–1, June 4, 1975, p 16860.

II. Privilege of the House

A. Basis of Privilege

§ 3. Introductory; What Constitutes a Question of Privilege

Elements Generally

Questions of privilege of the House are those which affect its rights collectively, ''its safety, dignity, and the integrity of its proceedings. . . .'' Rule IX. *Manual* § 661. A question asserted to involve the privilege of the House must involve one or more of the elements specified by Rule IX. See 104–1, Feb. 7, 1995, p ____. A Member may not by raising a question of the privileges of the House attach privilege to a question not otherwise in order under the rules of the House. 93–2, June 27, 1974, p 21596.

Questions relating to the organization of the House (1 Hinds §§ 22–24) and the right of Members to their seats (3 Hinds §§ 2579–2587), as well as various questions incidental thereto (1 Hinds § 322; 2 Hinds § 1207; 3 Hinds § 2588), have been held to give rise to questions of the privilege of the House. *Manual* § 662. The same is true of a proposition declaring the office of the Speaker vacant (6 Cannon § 35), and the resignation of a Mem-

ber from a select or standing committee (94–1, June 16, 1975, p 19054; 95–1, Mar. 8, 1977, pp 6579–82).

Safety and Dignity

A resolution directing an investigation into the safety of Members in the light of alleged structural deficiencies in the Capitol (96–2, July 25, 1980, pp 19762–64), expressing the sense of the House as to the proper attire for Members during meetings (96–1, July 17, 1979, pp 19072, 19073), or directing a committee to investigate and report on the impact of a test involving television coverage of House proceedings (95–1, Mar. 15, 1977, p 7608), gives rise to a question of the privileges of the House.

Questions relating to the health and comfort of Members and employees have been held to give rise to a question of the privileges of the House. 3 Hinds §§ 2629–2633. Subjects relating to the mere convenience of Members are not necessarily entertained as privileged. 3 Hinds § 2635.

Integrity of the Legislative Process

Among the subjects giving rise to a question of the privileges of the House are questions relating to the integrity of the legislative process (3 Hinds §§ 2597–2601, 2614), including:

- The presence on the floor of unauthorized persons (94–2, Sept. 9, 1976, p 29498).
- The conduct of those in the press gallery (3 Hinds § 2627).
- The integrity of the Journal (2 Hinds § 1363; 3 Hinds § 2620).
- The protection of House records and files (3 Hinds § 2659).
- The accuracy of House documents and messages (3 Hinds § 2613).
- A resolution directing the Committee on Rules to investigate and report to the House within a time certain on alleged alterations of the *Congressional Record* (98–2, Jan. 24, 1984, p 250).
- A resolution alleging that the Chair had improperly ordered the interruption of audio broadcast coverage of certain House proceedings (100–2, Mar. 17, 1988, p 4180).
- A resolution seeking a determination whether there had been an unreasonable delay in transmitting an enrolled bill to the President (102–1, Oct. 8, 1991, p ____).
- The fraudulent introduction of a bill (4 Hinds § 3388).
- The attempted bribery or corruption of Members (2 Hinds § 1599; 6 Cannon § 580).
- An assault on a committee clerk (2 Hinds § 1629).
- Use of an allegedly forged document at a committee hearing (104–1, Oct. 25, 1995, p ____).

A resolution directing a committee to investigate the circumstances surrounding the publication in a newspaper of a select committee report, which

the House had ordered not to be released, gave rise to a question of the privileges of the House, since it related to the integrity of House proceedings and the sanctity of its records. 94–2, Feb. 19, 1976, p 3914.

Effecting Changes in House Rules or Orders

A question of the privilege of the House may not be raised to effect a change in the rules of the House or their interpretation (Deschler Ch 11 § 3.1; 102–2, July 30, 1992, p ____), or to collaterally attack a rule or order properly adopted by the House at a previous time, the proper method of reopening the matter being by motion to reconsider. Deschler Ch 11 § 3.2. Thus, a resolution collaterally challenging an adopted rule of the House by delaying its implementation was held not to give rise to a question of the privileges of the House. 103–1, Feb. 3, 1993, p ____.

Similarly, it has been held that a question of the privilege of the House may not be raised to:

- Collaterally challenge a standing order establishing a joint meeting for a foreign head of state by prohibiting future invitations (104–2, Jan. 31, 1996, p ____).
- Direct the Speaker to follow certain customs in allowing one-minute speeches at the beginning of a session (96–2, July 25, 1980, p 19764).
- Permit petitioners seeking redress of grievances to have access to the House floor (92–2, May 24, 1972, p 18675).
- Broaden the rule relating to access by Members to committee records (95–1, Dec. 6, 1977, p 38470).
- Direct that the party ratios of all standing committees, subcommittees and staffs thereof be changed within a time certain to reflect overall party ratios in the House (98–2, Jan. 23, 1984, p 78).
- Direct a committee to consider certain business (94–1, July 31, 1975, p 26250), a motion to that effect not being in order under the rules (93–2, June 27, 1974, p 21596).
- Declare a recess to receive a petition (92–2, May 24, 1972, p 18675).
- Effect a change in conference procedures (Deschler Ch 11 § 3.3).
- Direct the House to consider certain legislative measures deemed essential to the operation of government (104–2, Feb. 1, 1996, p ____).

The constitutional validity of an existing rule of the House may not be challenged under the guise of a question of privilege, whether that existing rule was adopted by separate vote of the House or, instead, by its vote on the adoption of all of its rules. 103–1, Feb. 3, 1993, p ____.

A Member may not by raising a question of the privileges of the House under Rule IX thereby attach privilege to a question not otherwise in order under the rules of the House. 94–1, July 31, 1975, p 26250. For example, a resolution directing that the reprogramming process established in law for legislative branch appropriations be subjected to third-party review for con-

formity with external standards of accounting but alleging no deviation from duly constituted procedure was held not to give rise to a question of the privileges of the House. 102–2, May 20, 1992, p ____.

§ 4. Charges of Illegality or Impropriety

Specific Charges and General Criticism Distinguished

General criticism of the Congress (Deschler Ch 11 § 8.1) or the Members of the House (Deschler Ch 11 § 8.2) does not give rise to a question of the privilege of the House. Allegations that are merely critical of the legislative process, such as charges of inactivity in regard to a subject reported from committee, are insufficient. 93–2, June 24, 1974, pp 21596–98. But an allegation of criminal conduct by the Congress has been presented as a question of the privilege of the House (Deschler Ch 11 § 8.3), as have charges that the House was being influenced by mobs (Deschler Ch 11 § 8.4) or that a committee of the House was engaged in subversive activities (80–2, Mar. 10, 1948, p 2476).

Charges Involving Members

Charges against Members have often been made the basis of a question of personal privilege (§§ 18–20, infra). Such charges may also give rise to a question of the privilege of the House where they involve elements of illegality or criminality so as to impugn the honor and dignity of the House itself. Thus, charges against Members of graft (7 Cannon § 911), abuse of the franking privilege (3 Hinds § 2705), use of ''ghost'' employees (102–2, Apr. 9, 1992, p ____), improper attempts to influence a vote (Deschler Ch 11 § 9.1), or giving away atomic secrets (Deschler Ch 11 § 9.2), have given rise to the privilege of the House, as has the illegal solicitation of political contributions in a House office building. 99–1, July 10, 1985, p 18397. But a mere allegation that a Member distributed an unauthorized questionnaire was held insufficient to give rise to a question of the privileges of the House. Deschler Ch 11 § 9.3.

A question of the privilege of the House may be based on charges against Members even though they are not identified by name. 3 Hinds § 2705.

In 1992, resolutions relating to the operation of the ''bank'' in the Office of the Sergeant at Arms were presented as questions of the privileges of the House, including a resolution instructing the Committee on Standards of Official Conduct to disclose the names and pertinent account information of Members and former Members found to have abused the privileges of the ''bank.'' See 102–2, Mar. 12, 1992, p ____.

Charges Involving House Officers or Employees

Charges that an officer or employee of the House acted illegally or improperly may give rise to a question of the privilege of the House. 3 Hinds §§ 2628, 2645–2647; 6 Cannon § 35; Deschler Ch 11 § 10.3. Thus, a charge that an officer of the House conspired to influence legislation is taken up as a question of privilege of the House. 3 Hinds § 2628. The same is true of an allegation that an officer of the House made secret motions in certain litigation without the knowledge of the House (96–2, Feb. 13, 1980, p 2768) or that an employee appeared in court as special counsel for a committee without authorization (Deschler Ch 11 § 10.3). Allegations of improper representation by counsel of the legal position of Members in a brief (101–2, Mar. 22, 1990, p ____), and allegations of unauthorized intervention by a committee employee in judicial proceedings (102–2, Feb. 5, 1992, p ____), have also given rise to a question of the privileges of the House. On the other hand, merely alleging favoritism by the Speaker in making appointments (Deschler Ch 11 § 10.1) or rudeness by the Doorkeeper in removing an occupant of the gallery (Deschler Ch 11 § 10.2) have been held not to give rise to a question of the privileges of the House.

In the 102d Congress, numerous resolutions relating to the financial operation of the Office of the Sergeant at Arms and the management of the Office of the Postmaster were presented as questions of the privileges of the House. Among them were resolutions terminating all bank and check-cashing operations in the Office of the Sergeant at Arms (102–1, Oct. 3, 1991, p ____), directing the Committee on House Administration to conduct an investigation of the operation and management of the Office of the Postmaster (102–2, Feb. 5, 1992, p ____), and directing the Committee on Standards of Official Conduct to investigate alleged violations of confidentiality by certain staff members (102–2, July 22, 1992, p ____).

§ 5. House Jurisdiction, Powers, and Prerogatives

Issues relating to the jurisdiction of the House or its prerogatives under the U.S. Constitution may give rise to a question of the privileges of the House. Hinds §§ 1480–1537; Cannon § 315; Deschler Ch 11 § 13. Matters which may be raised under this rule include jurisdictional questions relating to appropriations and the prerogative of the House to originate revenue-raising legislation. 2 Hinds §§ 1480–1501; 6 Cannon § 315; Deschler Ch 11 § 13.1; 100–2, June 21, 1988, p 15425. Generally, see APPROPRIATIONS.

Other related matters which have given rise to a question of the privileges of the House include:

- The issuance of a court order restraining the publication of a committee report (Deschler Ch 11 § 13.3).
- The disclosure of House records in response to process issued by a federal court (93–2, Dec. 18, 1974, p 40925).
- Intervention in judicial proceedings concerning the constitutionality of the one-House veto (95–1, Nov. 2, 1977, p 13949) or other legislative review provision (97–1, Jan. 29, 1981, p 1304).
- The prerogative of the House when a bill has been ''pocket vetoed''(*Manual* § 662).
- The affirmative vote necessary to extend the time period for state ratification of a constitutional amendment (95–2, Aug. 15, 1978, p 26203).
- The constitutional authority of the House with respect to impeachment propositions (3 Hinds §§ 2045–2048).

However, Rule IX is concerned not with the privileges of the Congress as a legislative branch, but only with the privileges of the House itself. Thus, neither the enumeration of legislative powers in Article I, § 8 of the Constitution nor the prohibition of that article against any withdrawal from the Treasury except by enactment of an appropriation renders a measure purporting to exercise or limit those powers a question of the privileges of the House. 104–1, Feb. 7, 1995, p ____. Also, the revenue-raising prerogative of the House may not be raised when the House is not in possession of the original papers (Deschler's Ch 13 § 14.2) nor may the issue be raised after the House has adopted a conference report containing an additional revenue matter not in either House or Senate version (104–1, Apr. 6, 1995, p ____).

Contempt Proceedings; Enforcement of Orders and Subpenas

The power of the House to punish for contempt may be invoked as a basis for raising a question of the privileges of the House. That question has been held to arise where contemptuous conduct has been charged against a Member (see 2 Hinds §§ 1641 *et seq.*), where a witness has refused to respond to an order to give testimony (3 Hinds §§ 1666 *et seq.*; Deschler Ch 11 § 12), and where a person has been charged with an offense against the House (2 Hinds §§ 1597 *et seq.*), such as attempted bribery (2 Hinds § 1599). Committee reports relating to the refusal of a witness to be sworn (Deschler Ch 11 § 12.2) or respond to a subpena *duces tecum* (Deschler Ch 11 § 12.3) likewise give rise to a question of the privileges of the House.

§ 6. Intervention in Judicial Proceedings

The House sometimes authorizes special appearances on its own behalf in judicial proceedings relating to the powers and prerogatives of the House, and resolutions granting the authority to intervene in such cases may be called up as privileged. 94–2, Aug. 26, 1976, p 27858; 97–1, Jan. 29, 1981, p 1304. The authority to intervene in judicial proceedings has been granted in cases involving the constitutionality of the one-House veto (95–1, Nov. 2, 1977, p 13949) or other legislative review provision (97–1, Jan. 29, 1981, p 1304), the validity and effect of subpenas issued by House committees or subcommittees (94–2, Aug. 26, 1976, p 27858), and the constitutionality of a law relating to the franking privilege (94–2, July 1, 1976, p 21852).

The House may authorize the Speaker to take any steps he considers necessary, including intervention as a party or by submission or briefs *amicus curiae*, in order to protect the interests of the House. 97–1, Jan. 29, 1981, p 1304. The House has on occasion adopted resolutions authorizing standing or select committees to make applications to courts in connection with their investigations. 95–1, Feb. 9, 1977, pp 3966–75; 95–1, Sept. 28, 1977, pp 31329–36. The House has also authorized the chairman of a subcommittee to intervene in a pending action on behalf of the subcommittee to obtain information in the possession of a federal agency (the FTC). 94–1, Dec. 18, 1975, p 41707.

§ 7. Correcting the Record; Expungement

The accuracy and propriety of reports in the *Congressional Record* may give rise to a question of the privileges of the House. 5 Hinds §§ 7005–7023; 8 Cannon §§ 3461, 3463, 3464; Deschler Ch 11 § 11; *Manual* § 662. Accordingly, a resolution to request the Senate to expunge from the Record certain debate reflecting on the integrity of the House or which is offensive or otherwise improper may give rise to a question of the privilege of the House, as may resolutions to expunge from the Record matter improperly inserted under leave to print. Deschler Ch 11 § 11. However, neither a question of personal privilege nor a question of the privilege of the House arises during debate in which offensive language is used, the remedy being to demand the objectionable words be taken down pursuant to Rule XIV clause 4 when spoken. 81–2, Feb. 6, 1950, p 1514. For further discussion of the procedure for taking down words, see CONSIDERATION AND DEBATE.

A resolution to correct inaccuracies in the Record is presented as a question of the privileges of the House. 5 Hinds § 7019; 8 Cannon § 3461; Deschler Ch 11 § 11.9; 96–1, May 7, 1979, pp 10099, 10100. However, a resolution to restore to the Record remarks previously deleted by House

order does not present a question of the privilege of the House, the proper method of reopening the matter being by motion to reconsider the vote. Deschler Ch 11 § 11.10.

§ 8. Service of Process on Members

The service of judicial process on a Member of the House has long been perceived as a matter relating to the integrity of House proceedings, and as constituting a basis for raising the question of the privileges of the House. 7 Cannon § 2164; Deschler Ch 11 §§ 14.1–14.10. Accordingly, when a Member is subpenaed on a matter relating to House business, the privilege of the House arises, and he advises the Speaker who lays the matter before the House for its consideration. Deschler Ch 11 §§ 14.1–14.4; 94–2, Jan. 22, 1976, p 581. Any modifications in the subpena or other process, made by the court after service, are likewise laid before the House. Deschler Ch 11 § 14.3.

This practice is followed whether the Member has been served with a summons as a defendant (Deschler Ch 11 § 14.1) or with a subpena as a witness (Deschler Ch 11 § 14.2). The privilege of the House arises in such cases whether the process has been issued by a state court (Deschler Ch 11 §§ 14.4, 14.5; 95–2, Sept. 26, 1978, p 31703) or by a federal court (87–1, Feb. 9, 1961, p 2000; 87–1, Feb. 21, 1961, p 2480), and is applicable to:

- Grand jury proceedings (Deschler Ch 11 § 15; 94–2, Apr. 1, 1976, p 9125).
- Orders to appear and show cause (Deschler Ch 11 § 14.9; 91–2, May 19, 1970, p 16165).
- Orders to appear for the taking of depositions or to answer interrogatories (Deschler Ch 11 § 14.10; 91–2, July 22, 1970, p 25333).
- Preliminary proceedings in criminal cases (92–1, Sept. 23, 1971, p 33114).
- Administrative proceedings before federal agencies such as the FCC (Deschler Ch 11 § 14.8).

§ 9. Service on House Officers or Employees

The service of process on the House or any of its officers or employees on a matter relating to House business gives rise to a question of the privileges of the House, and the matter must be laid before the House for its consideration. Deschler Ch 11 §§ 14–16. This procedure is followed whether service is on the Speaker himself (Deschler Ch 11 § 16.2; 88–1, Jan. 17, 1963, p 504; 91–1, Sept. 3, 1969, p 24002) or on the Clerk of the House (Deschler Ch 11 §§ 16.3, 16.7–16.9), or on the Sergeant at Arms (Deschler Ch 11 §§ 16.4, 16.11; 89–1, July 13, 1965, p 16529, and is applicable when

service is on a House employee (93–2, Sept. 30, 1974, p 33020) including an employee of the House Republican Conference (94–1, Sept. 23, 1975, p 29824).

The privilege arises whether the process is a summons naming the individual as a defendant (Deschler Ch 11 §§ 16.3, 16.4; 93–1, Oct. 25, 1973, p 34991) or a subpena requiring the party to appear as a witness (Deschler Ch 11 §§ 16.7–16.12). It applies to a court order to appear with House documents or other papers (90–2, Jan. 16, 1968, p 80; 95–2, Sept. 26, 1978, p 31758; 97–1, Apr. 10, 1981, p 7305), to an order to appear for the taking of a deposition (Deschler Ch 11 § 16.18), and to an order to show cause for the failure to comply with a prior subpena (93–2, Dec. 20, 1974, p 41863). The privilege arises whether the process was issued in a civil action (93–1, Nov. 15, 1973, p 37136), a criminal proceeding (Deschler Ch 11 §§ 16.9, 16.12; 92–1, Sept. 13, 1971, p 31575), or a court martial (Deschler Ch 11 § 16.17). The privilege extends to executive session records of a committee, and applies to a court order requesting production of such records from a prior Congress. 97–1, Apr. 28, 1981, p 7603.

§ 10. Service on Committee Chairmen or Employees

The service of a summons or other process on the chairman of a committee (Deschler Ch 11 §§ 17.1–17.4; 92–1, July 7, 1971, p 23813) or on one or more of its employees (Deschler Ch 11 §§ 17.5, 17.8; 86–1, Apr. 14, 1959, p 5858; 97–1, June 4, 1981, p 11501) gives rise to a question of the privilege of the House, and the matter is laid before the House for its consideration. This practice is followed where a subpena or other process has been served on a committee clerk (86–1, Apr. 27, 1959, p 6825), staff counsel for a committee (87–1, Feb. 21, 1961, p 2482), or a staff investigator for a committee (87–2, May 21, 1962, p 8823; 87–1, Feb. 21, 1961, p 2482), and has been invoked where a court order named both current and former employees (92–1, Mar. 2, 1971, pp 4584, 4593). It is applicable to a former employee of a former House select committee who has been subpenaed to give a deposition as to his recollection of certain executive session transactions. 97–1, Jan. 22, 1981, pp 694, 695.

The House is notified in the event that the subpena is subsequently modified (87–1, Feb. 21, 1961, p 2482) or withdrawn (93–2, June 6, 1974, p 18072).

A court order to compel the production of documents is within the scope of the privilege (94–1, Dec. 19, 1975, p 41972), as is a court order for the inspection and copying of certain documents (Deschler Ch 11

§ 17.9). Court orders issued pursuant to grand jury proceedings are similarly treated (Deschler Ch 11 § 17.7).

Under the former practice, an employee served with process notified the chairman of his committee, who then wrote a letter to the Speaker (see, for example, 86–1, Apr. 14, 1959, p 5858; 87–1, Feb. 21, 1961, p 2482). Under Rule L clause 2, the employee notifies the Speaker, in writing, of the service of process (*Manual* § 946).

§ 11. Procedure in Complying With Process

In 1981, the House adopted Rule L, which provides general authority to the Members, officers, and employees of the House to comply with subpenas served on them in relation to their functions, ''consistently with the rights and privileges of the House.'' Under the early practice, whenever a Member or officer or employee received a subpena, the House had to consider the adoption of a resolution authorizing a response. The House would decide case-by-case whether the person served should or should not comply with the subpena. In 1977, and again in 1979, the House adopted a resolution which granted general authority to respond to subpenas, but reserved to the House the right to revoke this permission in any specific case. Under this procedure, automatic compliance was authorized without the necessity of a House vote. See *Manual* § 946 (note).

Rule L continues this procedure and adds new steps to be taken in responding to a judicial subpena: it (1) directs compliance with such subpenas, subject to certain conditions, unless otherwise determined pursuant to the rule; (2) requires that the Speaker be promptly notified of the receipt of such subpena and that such notification be laid before the House; (3) requires a determination as to the propriety of the issuance of the subpena and its materiality and relevance; (4) requires that, when a determination has been made as to the propriety of the subpena, the Speaker and the House are so notified. *Manual* § 946. Since the authorization to comply with a subpena under Rule L does not take effect until the required determination of relevancy has been made (95–1, Apr. 6, 1977, p 10800), the Speaker is notified when determinations are to be made as to the propriety of a subpena, and the Speaker lays the matter before the House. 97–1, Apr. 28, 1981, p 7603; 97–1, June 4, 1981, p 11501; 97–1, Nov. 21, 1981, p 28709. The Speaker is notified and the House informed when a committee employee has determined, after consultation with counsel, that it would be consistent with the provisions of Rule L to comply with a subpena. 97–1, Nov. 16, 1981, p 27648. Rule L does not require the text of the subpena to be printed in the Record. 102–2, July 31, 1992, p ____.

§ 12. Resolutions Authorizing or Precluding Response

Although Rule L established a procedure for automatic compliance with subpenas without the necessity of a House vote (*Manual* § 946), the House may still assert its privilege, as it has in the past, by adopting a resolution that precludes a response to a subpena in any particular case (93–2, Dec. 18, 1974, p 41863; 94–1, Jan. 23, 1975, p 1161; 94–1, Dec. 19, 1975, p 49172), or which imposes certain conditions or limitations on testimony that may be given or documents that may be produced (Deschler Ch 11 § 18). The assertion of this privilege through the adoption of a resolution has been based on the doctrine of separation of powers. 94–1, Jan. 23, 1975, p 1161.

A resolution authorizing a response to a court order such as a subpena involves the privileges of the House (91–1, July 1, 1969, p 17948; 93–2, Jan. 23, 1974, p 464), and a Member calling up the resolution is recognized under the hour rule for debate (91–1, July 1, 1969, p 17948).

In the 102d Congress, the House considered as questions of the privileges of the House resolutions responding to a subpena for records of the House ''bank'' and to a contemporaneous ''request'' for such records from a special counsel (102–2, Apr. 29, 1992, p ____), and authorizing an officer of the House to release certain documents in response to another such request from the special counsel (102–2, May 28, 1992, p ____).

Duration of Authorization

Resolutions authorizing a response to a subpena or other court order are effective only during the Congress in which they were adopted. If the judicial proceedings in question extend into the next Congress, it may be necessary to seek another authorizing resolution. Deschler Ch 11 §§ 18.1, 18.2.

§ 13. — Conditions or Limitations on Response

The House, in authorizing a response to a subpena by resolution, may impose various conditions or limitations. The House may:

- Permit copies, but not original documents, to be produced (Deschler Ch 11 § 18; 91–1, Oct. 29, 1969, p 32005; 94–1, Dec. 4, 1975, p 38719).
- Limit disclosure to certified copies of relevant documents (93–2, Jan. 23, 1974, p 464).
- Prohibit disclosure of information acquired in one's official capacity (87–2, May 21, 1962, p 8823; 94–2, Mar. 31, 1976, p 8885).
- Prohibit disclosure of information not previously made public (92–1, Mar. 2, 1971, pp 4584, 4593).
- Limit disclosure to certain files and specified documents and only for inspection and copying (91–1, July 1, 1969, p 17948).

- Permit disclosure only on a determination of relevancy (94–1, Jan. 23, 1975, p 1161; 94–2, Mar. 2, 1976, p 4999; 94–2, Mar. 31, 1976, p 8885).
- Permit disclosure of certain documents but bar personal appearances (93–2, Aug. 22, 1974, p 30025; 93–2, Sept. 23, 1974, p 32023; 94–1, Dec. 19, 1975, p 41972).
- Permit personal appearances but bar production of certain records (Deschler Ch 11 § 18; 93–2, Sept. 16, 1974, p 31123).
- Permit production of original documents for laboratory examination (94–2, July 27, 1976, p 24089).
- Permit a Member to respond only when the House is not in session (94–1, June 4, 1975, p 16860; 94–1, Dec. 1, 1975, p 37888).

§ 14. Disclosure of Executive Session Materials

The House has traditionally required that executive session materials be released only when specifically permitted by authorizing resolution. Deschler Ch 11 § 18.4; 96–1, June 4, 1979, p 13180. This practice is continued under Rule L clause 6, which states that under no circumstances shall any minutes or transcripts of executive sessions, or any evidence of witnesses in respect thereto, be disclosed or copied. *Manual* § 946. Thus, the House may by resolution assert the privileges of the House against the release of executive session materials (94–1, Dec. 19, 1975, p 41972) or permit the disclosure only after a judicial finding of relevancy (95–1, Jan. 19, 1977, p 1724).

§ 15. Providing for Legal Counsel

Statutory Authorization

Legal counsel, through the Department of Justice, is made available to the officers of the House—but not its Members—pursuant to a provision of the U.S. Code. This statute may be invoked in actions brought against one for anything done by him while an officer of the House in the discharge of his official duty, or in executing any order of the House. The district attorney for the district within which the action is brought is directed on request to enter an appearance on behalf of the officer. 2 USC § 118. This procedure has been followed in actions involving the House (92–2, Aug. 18, 1972, p 29136), the Speaker (93–1, Feb. 5, 1973, p 3207), the Speaker and the Chairman of the Committee on Rules (92–2, May 16, 1972, p 17398), the Clerk of the House (93–1, Mar. 26, 1973, p 9452; 92–2, May 3, 1972, p 15627; 93–2, Sept. 16, 1974, p 31124), and the Sergeant at Arms (88–1, June 6, 1963, p 10359; 94–2, May 20, 1976, p 14926).

Authorization by Resolution

On a number of occasions the House has by resolution authorized the appointment of special counsel to represent an officer or Member or employee who has been served with process. Such a resolution is ordinarily privileged for consideration. 92–2, May 3, 1972, p 15627; 95–1, Nov. 2, 1977, p 13949; 94–2, Aug. 26, 1976, p 27858. If the resolution is not privileged, as where it was not reported by the appropriate committee, it may be brought up by unanimous consent. 93–1, Jan. 6, 1973, p 379. Pursuant to such a resolution, the House has authorized:

- The Speaker to appoint or retain counsel to represent the House and its employees. Deschler Ch 11 § 19.1; 94–1, Jan. 23, 1975, p 1161; 94–2, Mar. 9, 1976, p 5829.
- The chairman of a committee, with the approval of the Speaker, to retain special counsel. 95–1, Nov. 2, 1977, p 13949.
- The Sergeant at Arms to retain special counsel, with the approval of the Speaker and the chairman of the committee responsible for House administration. 94–2, Aug. 26, 1976, p 27858.
- The retention of special counsel to represent the interests of a subcommittee. 94–2, Aug. 26, 1976, p 27858.
- The retention of special counsel to represent members of a committee and its employees. Deschler Ch 11 § 19.2.

Representation by General Counsel

The House has established an Office of General Counsel to provide legal assistance and representation to the House. Rule I clause 11. The office has assisted and provided representation to Members, committees and House officers and employees in complying with legal process under Rule L.

B. Consideration

§ 16. Raising and Presenting the Question

In the House; Use of Resolutions

Questions of the privilege of the House are brought before the House in the form of a resolution (3 Hinds § 2546; 8 Cannon § 3464; Deschler Ch 11 § 4.2), which may be called up by any Member (3 Hinds § 2536) after proper notice and announcement of the form of the resolution (Rule IX clause 2). Such resolutions are privileged when called up (§ 2, supra), but are subject to the two-day layover requirement of Rule IX clause 2. The Speaker may designate the time for consideration at any time within two

legislative days after the announcement. The Majority and Minority Leaders are excluded from this requirement. *Manual* § 661. They may offer the resolution at any time, yielding only to the motion to adjourn. 103–1, July 22, 1993, p ____.

MEMBER: Mr. Speaker, I rise to a question of the privilege of the House, and offer a resolution which I send to the Clerk's desk.

SPEAKER: The gentleman submits a resolution relating to the privilege of the House, which the Clerk will report.

OPPONENT: Mr. Speaker, I make a point of order that the gentleman does not present a question of privilege.

SPEAKER: The Chair thinks the gentleman presents a question of privilege, and is recognized. [*Or*] The Chair will entertain argument as to whether the resolution presents a question of privilege.

Under Rule IX, a question of the privilege of the House having been raised, the Speaker initially decides whether the question presented constitutes a question of the privilege of the House, and rules as to the validity of the question raised. Deschler Ch 11 §§ 6.1, 6.2. He makes this decision at the time the question of privilege is called up; not at the time notice is given. 104–1, Feb. 3, 1995, p ____. Appeal may be taken from the Chair's ruling, however, since the final determination as to the validity of the question rests with the House. Deschler Ch 11 § 6.3.

The question having been properly raised on the floor by a Member, the Speaker must entertain the question (2 Hinds § 1501) and rule on its admissibility (3 Hinds §§ 2648–2650; Deschler Ch 11 § 1; 94–2, Mar. 9, 1976, p 5825). If the matter is not admissible as a question of privilege of the House, he may refuse recognition. Deschler Ch 11 § 6.1; 90–2, Oct. 8, 1968, p 30214; 93–2, June 27, 1974, p 21596.

The resolution must show a *prima facie* breach of the privileges of the House. The mere statement that the privileges of the House have been violated does not present a question of privilege. Deschler Ch 11 § 4.1.

A question of privilege may not be presented during a call of the House in the absence of a quorum unless it relates to the immediate proceedings. 3 Hinds § 2545.

In Committee of the Whole

A question of the privilege of the House based on proceedings in the House may not be raised in the Committee of the Whole. Deschler Ch 11 § 4.3. A breach of the privilege in the Committee of the Whole relates to the dignity of the House and, if raised, the Committee rises and reports to the House (2 Hinds § 1657). However, such a question must have been reported in Committee of the Whole. If not, it cannot be brought to the atten-

tion of the House, even though a question of privilege is involved. 4 Hinds § 4912.

§ 17. Debate; Disposition

A Member offering a resolution raising a question of the privileges of the House is recognized under the hour rule. Deschler Ch 11 § 7.1; 90–1, Mar. 9, 1967, pp 6035–49; 91–2, Dec. 14, 1970, pp 41355–58. The Member recognized must confine himself in argument to the question raised. Deschler Ch 11 § 7.2.

Beginning in the 103d Congress, the time allotted for debate on a resolution offered from the floor as a question of the privileges of the House must be equally divided between (A) the proponent of the resolution, and (B) the Majority Leader or the Minority Leader or a designee, as determined by the Speaker. Rule IX clause 2(a)(2). *Manual* § 661a.

A question of the privileges of the House is subject to disposition by:

- The ordinary motions permitted under Rule XVI clause 4 (94–2, Feb. 19, 1976, p 3920; 101–2, Mar. 22, 1990, p ____).
- The motion for the previous question (5 Hinds § 5460; 8 Cannon § 2672; Deschler Ch 11 § 7.3).
- The motion to postpone (3 Hinds § 2536).
- The motion to refer to committee (8 Cannon § 3461; Deschler Ch 11 §§ 7.4, 7.5; 101–2, Mar. 22, 1990, p ____).
- The motion to commit under Rule XVII clause 1 (102–2, Mar. 12, 1992, p ____).

A question of the privileges of the House is subject to a timely motion to lay on the table (5 Hinds § 5438; 6 Cannon § 560; 95–2, Aug. 15, 1978, p 26203). A resolution raising a question of the privileges of the House may be tabled pursuant to such a motion; tabling is considered a final adverse disposition of that particular resolution although the question may be rephrased and presented anew. 5 Hinds § 5438. Any appeal from a decision by the Speaker disposing of the question is likewise subject to the motion to lay on the table. Deschler Ch 11 § 6.3.

A committee report may be submitted as a matter involving the privileges of the House, and may be considered on the same day reported notwithstanding the three-day availability rule. Deschler Ch 11 § 5.10. A proposition to discharge a committee from a question of privilege is itself privileged. 3 Hinds § 2709.

A resolution that presents a proper question of the privileges of the House (alteration of subcommittee hearing transcripts) may propose the creation of a select investigatory committee with subpena authority to report back to the House by a date certain. 98–1, June 29, 1983, p 18104.

III. Personal Privilege

A. Basis of Privilege

§ 18. In General

Questions of personal privilege are defined as those that affect the ''rights, reputation, and conduct'' of individual Members in their representative capacity. Rule IX clause 1. Under this rule, a Member may rise to a question of personal privilege from the floor to respond to criticism of his integrity in his representative capacity. 92–2, Apr. 19, 1972, pp 13491–97. Thus, a statement challenging the integrity of an official transcript of a committee hearing, thus impugning the integrity of those Members responsible for its preparation, has given rise to a question of personal privilege. 86–1, June 23, 1959, p 11587. But charges that do not involve the Member in his representative capacity, such as charges relating to one's conduct prior to becoming a Member, do not give rise to a question of personal privilege. 3 Hinds §§ 2691, 2723, 2725.

To give rise to a question of personal privilege, the criticism must reflect directly on the Member's integrity or reputation. Deschler Ch 11 § 24.1. Mere statements of opinion about or general criticism of his actions as a Member (3 Hinds §§ 2712–2714) or his voting record or views (Deschler Ch 11 §§ 24.2, 24.3), do not constitute grounds for a question of personal privilege. Thus, a charge that a Member's actions amount to a ''public scandal,'' even when made by the President (6 Cannon § 525), or that a Member distributed certain improper questionnaires (Deschler Ch 11 § 24.1), or that he filed a minority report that had been written by employees of a political party (Deschler Ch 11 § 24.4), does not give rise to a question of personal privilege.

Published charges relating to the House or the Members generally (Deschler Ch 11 § 33.2) or to ''persons advocating'' a certain measure (Deschler Ch 11 § 33.1), with no Member being named or otherwise identified (Deschler Ch 11 § 33.3) do not give rise to a question of personal privilege.

A question of privilege may not be used to collaterally attack the rules or orders of the House. A refusal by those in charge of the time for general debate on a bill to allot time to a Member does not give that Member grounds for a question of personal privilege. Deschler Ch 11 § 24.

§ 19. Charges by a Fellow Member; Words Used in Debate

Generally

Statements by a Member accusing another Member of lying (Deschler Ch 11 § 26.7), making a false statement (3 Hinds § 2717), or impugning his motives or veracity (Deschler Ch 11 § 26.8) may give rise to a question of personal privilege, as may accusations of traitorous acts (Deschler Ch 11 §§ 26.2, 26.5, 26.6), of gross political interference with a government contract (Deschler Ch 11 § 26.3), or an abuse of personal power and of sponsoring a smear (Deschler Ch 11 § 26.4). It is not necessary that the Member be identified by name if it is clear from other sources that the reference was to a particular Member (3 Hinds § 2709; 6 Cannon §§ 616, 617; Deschler Ch 11 § 26.1).

Words Uttered in Debate or Inserted in the Record

A question of personal privilege may not be based on language uttered on the floor of the House in debate, the remedy being a timely demand that the objectionable words be taken down when spoken. 8 Cannon § 2537; Deschler Ch 11 § 27.1. Generally, see CONSIDERATION AND DEBATE. However, such a question may be based on objectionable remarks inserted by a Member in his speech under leave to revise and extend his remarks. 8 Cannon § 2537; Deschler Ch 11 §§ 27.2–27.5. Charges reflecting on a Member's integrity or reputation, inserted in the Record by a Senator, may also give rise to a question of personal privilege. Deschler Ch 11 §§ 27.6–27.12.

§ 20. Charges in the Press

Generally

Criticism of a Member in the press may give rise to a question of personal privilege where the criticism reflects on his integrity or conduct in his representative capacity. 94–1, May 22, 1975, p 15883; 94–2, Feb. 23, 1976, p 4062; 96–1, Sept. 21, 1979, p 25656. But vague charges in newspaper articles (6 Cannon § 570), criticisms (3 Hinds §§ 2712–2714), or even misrepresentations of the Member's speeches or acts or responses in an interview (3 Hinds §§ 2707, 2708; 101–2, Aug. 3, 1990, p ____), have not been entertained. The mere allegation that there has been a violation of the rules of the House, such as that votes have been improperly paired (8 Cannon § 3094) or that a bill has been placed on the incorrect calendar (3 Hinds § 2616), does not give rise to a question of personal privilege. But where the allegation impugns his character or motives (98–2, May 15, 1984, p 12201) or reflects on a Member's reputation or integrity, a question of per-

sonal privilege may arise. For example, language in a newspaper asserting that a Member would divide the Nation and that he was a spokesman for the forces of betrayal was held to involve a question of personal privilege. Deschler Ch 11 § 31.3. Charges that a Member is a fascist sympathizer (Deschler Ch 11 §§ 31.4–31.11) or that he has engaged in conduct inimical to the national security (Deschler Ch 11 §§ 31.12–31.18) have also given rise to questions of personal privilege. Other charges in the press that have given rise to a question of personal privilege include allegations of:

- Misuse of public funds. Deschler Ch 11 § 30.1.
- Conflict of interest. Deschler Ch 11 §§ 30.6, 30.7.
- Deceptive or disgraceful conduct reflecting on the House. Deschler Ch 11 §§ 30.2, 30.15, 30.16.
- Dereliction of duties. Deschler Ch 11 § 30.3.
- Confiscation of evidence. Deschler Ch 11 § 30.4.
- Being influenced in legislative action by unworthy motives. 6 Cannon § 576; 8 Cannon § 2216.
- Improper conduct in agency dealings. Deschler Ch 11 § 30.17.
- Abuse of the franking privilege. Deschler Ch 11 § 30.18.
- Engaging in improper lobbying activities. 87–2, June 6, 1962, p 9792.
- Introducing legislation in which the Member had a personal interest. 89–2, June 22, 1966, p 13907.
- Wrongfully claiming ''out of pocket'' expenses in a fund-raising activity. 94–2, Feb. 23, 1976, p 4062.

Criticism of Committee Activities

Criticism impugning the motives or actions of a chairman or member of a committee may give rise to a question of personal privilege. 87–2, July 16, 1962, p 13681; 95–2, Feb. 21, 1978, p 3853. Thus, a Member has been recognized to rise to a question of personal privilege to respond to press charges that he had:

- Improperly disposed of classified documents from committee files. 94–2, Mar. 9, 1976, p 5825.
- Abused his power or acted improperly in carrying out committee responsibilities. Deschler Ch 11 §§ 30.8–30.14.
- Employed someone who did no work for the committee. 94–2, May 25, 1976, p 15344.

Normally, however, a question concerning charges as to the propriety of committee procedure as distinct from charges against the Member's conduct in his representative capacity, should be raised as a question of the privileges of the House, under Rule IX, assuming that the dignity and integrity of the House proceedings is at issue. (Questions of the privileges of the House are discussed in §§ 3 *et seq.*, supra.)

Charges of Illegality

Charges in the press that a Member did something illegal in his representative capacity give rise to a question of personal privilege. 3 Hinds § 1829; Deschler Ch 11 §§ 29.1, 29.3. Such a question arises on publication of charges that a Member committed an act amounting to:

- Treason or sedition (Deschler Ch 11 § 29.6).
- Forgery (Deschler Ch 11 § 29.2).
- Corruption and bribery (3 Hinds § 1830).
- Criminal conspiracy or perjury (Deschler Ch 11 § 29.5).
- Tax evasion and irregularities (Deschler Ch 11 §§ 29.4, 29.5).
- A violation of the securities laws (95–2, June 2, 1978, p 16056).

Charges of Impropriety

The publication of vague charges accusing Members of impropriety do not give rise to a question of personal privilege. 8 Cannon § 2711. No question of personal privilege arises from the publication of remarks attributed to a Member which he denies having made. 8 Cannon § 2708.

A charge of vote-selling in a conflict-of-interest case (Deschler Ch 11 § 28.1) or involvement with an organization being investigated by a Senate committee (Deschler Ch 11 § 28.3) or of conduct characterized as reprehensible (Deschler Ch 11 § 28.2) has given rise to a question of personal privilege.

Charges Impugning Veracity

Published charges that a Member made a false statement may give rise to a question of personal privilege. 3 Hinds § 2718; Deschler Ch 11 §§ 32.1, 32.2. For such a charge to give rise to this question of privilege, however, it must be alleged that the Member made a false statement knowingly, with intent to deceive. 3 Hinds § 2721. A mere difference of opinion over a factual matter, where there is no intent to deceive, does not give rise to a question of personal privilege. 3 Hinds §§ 2720, 2721.

B. Consideration and Debate

§ 21. Raising the Question; Procedure

Unlike questions of privilege of the House, which must be raised by resolution (§ 16, supra), questions of personal privilege are ordinarily raised from the floor (Deschler Ch 11 § 20; 92–2, Apr. 19, 1972, pp 13491–97).

The Member, before proceeding with argument on a question of personal privilege, must state to the Speaker the grounds on which the question

is based. Deschler Ch 11 § 21.1; 89–2, June 22, 1966, p 13907. In ruling on the question, the Speaker may insist that the offending material, if published, be submitted to him for his examination. Compare Deschler Ch 11 §§ 21.2, 21.3.

MEMBER: Mr. Speaker, I rise to a question of personal privilege.
SPEAKER: The gentleman will state his question of privilege. . . .
SPEAKER: The statement seems to bring the case within the rule, and the gentleman will proceed.

In Committee of the Whole

Early precedents suggest that a question of personal privilege may be raised in the Committee of the Whole if the matter in issue arose during the Committee proceedings. Compare 3 Hinds §§ 2540–2544. Under the modern practice, however, questions of personal privilege are raised in the House, not in the Committee of the Whole. Deschler Ch 11 § 21.4. A question of personal privilege alleged to have arisen in the Committee of the Whole cannot be raised in the House unless the matter was reported to it by the Committee. 4 Hinds § 4912.

§ 22. Debate on the Question; Speeches

Debate on a question of personal privilege is ordinarily under the hour rule. 5 Hinds § 4990; 8 Cannon § 2443; Deschler Ch 11 § 22.1. The Member recognized on the question controls the hour. 94–1, May 22, 1975, p 15883. A Member wishing to respond to another Member's debate on a question of personal privilege may do so in a special-order speech. Deschler Ch 11 § 22.2.

In rising to a question of personal privilege, the Member should confine his remarks to the statements or issues giving rise to the question (5 Hinds §§ 5075, 5076; 91–2, Aug. 4, 1970, p 27130; 98–2, Mar. 31, 1984, p 14623), but is entitled to discuss related matters necessary to challenge the charge which has been made against him. Deschler Ch 11 § 22.5. He should limit his remarks to the matter concerning himself personally (5 Hinds § 5078), and should not use his debate time to prefer charges against others (8 Cannon §§ 2481–2483). His remarks should be kept within limits consistent with the spirit of the rule, and he may not use the privilege as a vehicle for discussions not otherwise in order. 8 Cannon § 2448.

In lieu of raising a question of personal privilege, a Member may use a one-minute or special-order speech to respond to the charge or allegation. Deschler Ch 11 § 22.4. Another option available to the Member is merely to insert his remarks in the Record, without using debate time. 94–2, Feb. 23, 1976, p 4062.

Quorums

A. GENERALLY; QUORUM REQUIREMENTS

B. POINTS OF ORDER OF NO QUORUM

C. QUORUM CALLS

Research References

4 Hinds §§ 2884–3055
6 Cannon §§ 638–707
5 Deschler Ch 20
Manual §§ 765–774c, 863
U.S. Const. art. I § 5

A. Generally; Quorum Requirements

§ 1. In General

Constitutional Requirements and the House Rules

Under the U.S. Constitution, a majority of each House constitutes a quorum to do business, although a smaller number may adjourn from day to day. U.S. Const. art. I § 5. Since the presence of a quorum is a constitutional requirement, and because a no-quorum point of order is the only method available to a Member to enforce that requirement, the Speakers have been reluctant to withhold recognition for a point of order of no quorum when raised in accordance with the rules of the House. Deschler Ch 20 §§ 14.2, 14.3. Quorum requirements for committees, see COMMITTEES.

The Constitution does not define those legislative proceedings that are to constitute ''business'' for purposes of the quorum requirement. ''Business'' in this context has become a term of art which, under the House rules and precedents, does not encompass all parliamentary proceedings. For example, neither the prayer, administration of the oath, certain motions incidental to a call of the House, nor an adjournment constitute business requiring a quorum. Deschler Ch 20 § 18 (note 10). Indeed, the House rules specifically prohibit the entertainment of a no-quorum point of order at certain stages of the legislative process, including the stage of debate. See § 3, infra. In effect, the House has by adopting such a rule determined that at that stage it is not ''conducting business.'' 95–1, Sept. 27, 1977, p 31048. And since the adoption of such a rule is viewed by the House as a proper exercise of its rule-making authority under article 1 § 5 of the Constitution, there is no constitutional basis for a point of order of no quorum during debate in the House. 95–1, Sept. 12, 1977, p 28800.

Recent Changes in the House Rules

Beginning with the 93d Congress, sweeping changes were made in the House rules governing the making of point of order of no quorum (§§ 6–10, infra), the procedures to be followed in procuring a call of the House (§§ 11–16, infra), and the kinds of business that require a quorum (§ 3, infra). In 1977, in an effort to curb time-consuming quorum calls, the House adopted a rule precluding no-quorum points of order unless the Speaker has put the pending proposition to a vote. § 6, infra.

In the 95th Congress, the House gave the Speaker the discretionary authority, under the rules, to recognize for a motion for a call of the House. See § 12, infra. In 1979, the House adopted a rule permitting the House to

proceed with pending business following the establishment of a quorum without the necessity of adopting a motion to dispense with further proceedings under the call. § 20, infra.

The quorum rule for the Committee of the Whole was recently changed to permit no-quorum points of order during general debate only at the discretion of the Chair. From the inception of general debate on a measure on a given day until the Chair puts the question on a motion during the five-minute rule, only one point of order that a quorum is not present will inevitably produce a quorum call. During general debate, entertaining such points of order is at the Chair's discretion. If that discretion is not exercised, one no quorum point of order can be made and must be entertained during consideration under the five-minute rule unless a quorum has been established by a vote. § 6, infra. And in 1974, the rules were amended to permit ''notice'' or ''short'' quorum calls in the Committee of the Whole by authorizing the Chairman to determine that a quorum of the Committee has appeared and is present during a call, and to declare that a quorum is constituted, thereby vacating further proceedings under the call. § 17, infra.

Presumptions as to the Presence of a Quorum

A quorum is presumed to be present unless a point of no quorum is entertained and the Chair announces that a quorum is in fact not present or unless the absence of a quorum is disclosed by a vote or by a call of the House. Deschler Ch 20 § 1. Although it is not the duty of the Chair to take cognizance of the absence of a quorum unless otherwise disclosed (6 Cannon § 565), failure of a quorum to vote on a roll call cannot be ignored; the Chair must announce that fact although it was not objected to from the floor. 4 Hinds §§ 2953, 2963; 6 Cannon § 624; Deschler Ch 20 § 1.

§ 2. What Constitutes a Quorum

A quorum of the House is defined as a majority of those Members sworn and living, whose membership has not been terminated by resignation or by House action. 4 Hinds §§ 2889, 2890; 6 Cannon § 638; Deschler Ch 20 § 1; *Manual* § 53. Thus, when the Members, as so defined, number 435, a quorum to do business is 218 Members (assuming no vacancies). When the membership has been reduced by reason of deaths to 432, a quorum to do business is 217 Members. 94–2, June 18, 1976, p 19312.

A quorum in the Committee of the Whole is 100 Members. Rule XXIII clause 2(a). *Manual* § 863.

The quorum required in the House *as in* Committee of the Whole is a quorum of the House and not a quorum of the Committee of the Whole. 6 Cannon § 639.

§ 3. Business Requiring a Quorum; Effect of Quorum Failure

In General

In Jefferson's time, the Chair was not taken until a quorum for business was present. *Manual* § 310. In the early practice, a quorum was required during debate (4 Hinds §§ 2935–2939) and for other routine activities of the House, such as the reading of the Journal (4 Hinds § 2733), the consideration of committee reports (4 Hinds § 2947), and the calling up of measures (4 Hinds § 2943).

Under the modern practice, the Speaker takes the Chair at the hour to which the House has adjourned and there is no requirement that the House proceed immediately to establish a quorum. *Manual* § 310. Although the Speaker has the authority to recognize for a call of the House at any time (§ 12, infra), a no-quorum point of order does not lie in the House unless the Speaker has put the pending motion or proposition to a vote. Rule XV clause 6(e); *Manual* § 774c. Accordingly, under this rule, the Chair may not entertain a point of order of no quorum during debate in the House. 97–1, Oct. 1, 1981, pp 22752–67; 98–1, Aug. 2, 1983, p 22234. Other provisions of Rule XV—in clause 6(a)—specifically prohibit the making or entertaining of a point of no quorum at other stages of the legislative process, such as during the offering of prayer or the administration of the oath, but these provisions have been rendered largely obsolete by the broad language of clause 6(e), which prohibits points of order *at any time* unless the Speaker has put a pending question to a vote. See 95–1, Jan. 11, 1977, p 891.

The pendency of a unanimous-consent request in the House is not equivalent to the Chair's putting a pending motion or proposition to a vote and does not permit a point of order of no quorum under Rule XV clause 6(e). 95–1, Sept. 16, 1977, p 29602.

Business Precluded in Absence of Quorum

The House cannot conduct business after the absence of a quorum has been announced. Deschler Ch 20 §§ 1.5, 10.4; *Manual* § 55. Even unanimous-consent business is not in order in the announced absence of a quorum. 98–1, July 13, 1983, p 18844. Even the Member who made the point of order of no quorum cannot then withdraw it by unanimous consent, as such a request would constitute business. 4 Hinds §§ 2928–2931; 6 Cannon § 657; Deschler Ch 20 § 10.4 (note).

Where the announced absence of a quorum has resulted in a roll call vote under Rule XV clause 4, the House may not, even by unanimous consent, vacate the vote in order to conduct another voice vote in lieu of the roll call vote, since no business, including a unanimous-consent agreement,

is in order in the announced absence of a quorum. 98–1, July 13, 1983, p 18844; 100–2, Feb. 24, 1988, p 2451. The House having authorized the Speaker to compel the attendance of absent Members, the Speaker announced that the Sergeant at Arms would proceed with necessary and efficacious steps, and that pending the establishment of a quorum no further business, including unanimous-consent requests for recess authority, could be entertained. 100–1, Nov. 2, 1987, p 30389.

If a quorum does not respond on a call of the House or on a recorded or yea and nay vote, even the most highly privileged business must terminate. 4 Hinds § 2934; 6 Cannon § 662. The House has only two alternatives: to adjourn, or to continue the proceedings under a pending call of the House until a quorum of record is obtained. Deschler Ch 20 §§ 10.10–10.12. If a call of the House is ordered the House must first secure a quorum before disposing of the pending matter *de novo*. 95–1, Sept. 22, 1977, p 30290.

§ 4. Motions Requiring a Quorum

In General

Putting a motion to a vote falls within the language of clause 6(e) of Rule XV, thereby permitting the Speaker to entertain a no-quorum point of order if the motion is one that requires a quorum for adoption. *Manual* § 774c. Thus, a Member may make a point of order of no quorum when the Speaker has put the question on a motion to suspend the rules. 95–1, Sept. 27, 1977, p 31048. However, where the Speaker postpones further proceedings on a motion to suspend the rules, the question is no longer being put to a vote for purposes of permitting a point of order of no quorum until the question recurs as unfinished business. 95–1, Sept. 26, 1977, p 30948. See also 96–1, Sept. 24, 1979, p 25876.

Motions Incident to a Call of the House

The motion for a call of the House does not require a quorum for adoption. 97–1, Oct. 1, 1981, pp 22752–67. Indeed, Rule XV clause 6(a) prohibits a point of order of no quorum from being made or entertained during the offering, consideration, and disposition of any motion incident to a call of the House (*Manual* § 774c), and this rule has been applied to the motion to order a call of the House (96–1, Nov. 13, 1979, p 32185; 97–1, Oct. 1, 1981, pp 22752–67), and to the motion to dispense with further proceedings under the call (95–2, Mar. 8, 1978, p 6081).

The Motion to Adjourn

A quorum is not required on a simple motion to adjourn. Deschler Ch 20 §§ 8.7, 8.8. But a quorum is required for the adoption of a motion that

when the House adjourns that day it adjourn to a day and time certain. 94–1, June 19, 1975, p 19789; 94–2, June 22, 1976, p 19755. A quorum is required on a resolution providing for adjournment *sine die* (Deschler Ch 20 § 8.9), but not on a motion to adjourn which implements such a resolution (Deschler Ch 20 § 8.10).

While a quorum is not required to adjourn, a point of no quorum on a negative vote on adjournment, if sustained, precipitates a call of the House. 6 Cannon § 700; Deschler Ch 20 § 8.13; *Manual* § 773.

The Motion to Rise

The motion that the Committee of the Whole rise does not require a quorum for adoption but a negative voice vote permits a point of no quorum pending the demand for a recorded vote. See § 6, infra.

§ 5. The Count to Determine a Quorum

Counting Those Present Together With Those Voting

Until 1890, the view prevailed in the House that it was necessary for a majority of the Members to vote on a matter submitted to the House in order to satisfy the constitutional requirement for a quorum. Under this practice, the opposition could break a quorum simply by refusing to vote. 4 Hinds § 2977. This was changed in 1890, with the historic ruling by Speaker Reed, later embodied in Rule XV (*Manual* §§ 772, 774b), that Members present in the Chamber but not voting would be counted in determining the presence of a quorum. 4 Hinds § 2895; see also Deschler Ch 20 § 3. This ruling was upheld by the Supreme Court in *United States* v *Ballin* (144 US 1), the Court declaring that the authority of the House to transact business is ''created by the mere presence of a majority,'' and that since the Constitution does not prescribe any method for determining the presence of such majority, it is within the competency of the House ''to prescribe any method which shall be reasonable certain to ascertain the fact.'' Since *Ballin*, the point of order as to the absence of a quorum is that no quorum is present, not that no quorum has voted. 4 Hinds § 2917.

Method of Counting

Speaker Reed also ruled in 1890 that it was the function of the Speaker to determine the presence of a quorum in such manner as he should determine accurate and suitable, by the Chair's own count or by various other methods. 4 Hinds § 2932. Under the modern rules of the House, the Speaker may direct the use of the electronic system in the Chamber to record the names of the Members voting or present. *Manual* § 774b. In lieu of using the electronic system, the Speaker in his discretion may direct that the pres-

ence of Members be recorded by clerks (*Manual* § 771b) or he may direct that a quorum call be taken by an alphabetical call of the roll. 93–1, Mar. 7, 1973, p 6699. And on numerous occasions Speakers have taken an actual count of the Members to ascertain the presence of a quorum on occasions when the validity of a vote was not an issue. 4 Hinds § 2909. In any case, the Chair's count of a quorum is conclusive and may not be challenged on appeal. 93–2, July 24, 1974, p 25012; 95–1, Aug. 3, 1977, p 26532.

The number of Members present for the purpose of determining a quorum may be established by a count of the number of Members voting on a pending proposition. 94–1, Oct. 22, 1975, p 33688. But the Chair's count of those Members standing on a division vote in the House does not demonstrate the absence of a quorum since the Chair in taking such a vote does not count all Members present in the Chamber but only those standing. 95–1, Sept. 27, 1977, p 31048; 96–1, Aug. 1, 1979, pp 22006, 22007.

Recounts

When the Chair is counting to determine if a quorum is present, he may recount the House before announcing the result of his count, acting on the statement of a Member that more Members had entered the Chamber since the first count, and thereby establish a quorum. Deschler Ch 20 § 3.18.

B. Points of Order of No Quorum

§ 6. When in Order; Former and Modern Practice Distinguished

In the House

Under the former practice, a point of no quorum was in order in the House at any time, even when a Member had the floor in debate. Deschler Ch 20 § 13.8. The right of the Member to the floor was suspended until a quorum was secured. Deschler Ch 20 § 13.9. A point of no quorum could interrupt the reading of the Journal (Deschler Ch 20 § 13.14), or the reading of a resolution even though the resolution was privileged for consideration (Deschler Ch 20 §§ 13.11, 13.12).

Under the modern practice, the use of no-quorum points of order in the House has been sharply curtailed. In 1974, the House adopted Rule XV clause 6(a), which provides that no-quorum points of order may not be made during the offering of prayer, the administration of the oath, or the reception of messages from the President or the Senate. This rule, based to some extent on earlier precedent, also precludes no-quorum points of order (after a quorum has once been ascertained) during the reading of the Journal, during special orders, and at certain other times. See *Manual* § 774c. Still broader

language restricting the use of the point of order in the House was adopted in 1977, when the House adopted Rule XV clause 6(e), which provides that a no-quorum point of order does not lie ''unless the Speaker has put the pending motion or proposition to a vote.'' *Manual* § 774c. Under this rule, the Speaker may not entertain a point of order of no quorum in the House when a pending question has not been put to a vote (95–2, May 4, 1978, p 12609), notwithstanding the failure of a quorum to have voted on a prior item of business. 95–1, Sept. 16, 1977, p 29563. The refusal of the Chair to entertain a point of order of no quorum where prohibited by clause 6 is not subject to appeal (95–1, Sept. 16, 1977, p 29594), and the Chair will not entertain a unanimous-consent request to waive its provisions (93–2, Dec. 9, 1974, p 38664).

In Committee of the Whole

A similarly restrictive rule applies to no-quorum points of order in the Committee of the Whole. The applicable rule states that, ''after the roll has once been called'' to establish a quorum during any given day, the Chairman may not entertain a point of order that a quorum is not present unless the Committee is operating under the five-minute rule and the Chairman has put the pending motion or proposition to a vote. Rule XXIII clause 2(a). *Manual* § 863. A Member may make a no-quorum point of order while the Chair is counting those standing in the Committee to support a demand for a recorded vote and prior to the Chair's final announcement of the count. At that point, the Chair must immediately begin counting for a quorum, and the request for a recorded vote remains pending following the establishment of a quorum. 97–2, Aug. 5, 1982, pp 19658, 19659.

The restriction of Rule XXIII clause 2 against making a point of order of no quorum ''after the roll has once been called to establish a quorum during such day'' means on that day during consideration of the pending bill, since the House resolves itself into a new Committee of the Whole on each bill, with a new Chairman. The rule barring no-quorum points of order in the Committee (with certain exceptions) after a quorum has once been established is applicable whether the quorum was established by a regular quorum call or a ''short'' or vacated quorum call. 95–2, June 8, 1978, p 16778.

Although a no-quorum point of order may be raised during general debate in the Committee of the Whole, the Chairman is given the discretion whether to entertain it. Rule XXIII clause 2(a). This discretionary authority was given to the Chairman by a rules change adopted in 1981. *Manual* § 863.

A no-quorum point of order does not lie in the Committee pending a motion that the Committee rise, since that motion (as distinguished from the motion to rise and report) does not require a quorum for adoption. 4 Hinds §§ 2972, 2975. 92–2, May 31, 1972, p 19353. The fact that the vote whereby the Committee rose does not show a quorum (4 Hinds § 4914) or that a point of no quorum was made without an ascertainment thereof (4 Hinds § 2974), does not prevent reception of the report of the Committee in the House. And the rules preclude the entertainment of a no-quorum point of order during the period after the Committee has risen and before the Chairman has reported the pending bill or resolution back to the House, a quorum having been once established on that day. Rule XV clause 6(c).

§ 7. Objections to Vote Taken in Absence of Quorum

In the House

The rules of the House permit a Member to object to a vote taken in the absence of a quorum. An objection to such a vote under Rule XV clause 4, if timely made, necessarily precipitates a call of the House (unless the House adjourns) and, simultaneously, the yeas and nays on the pending question. *Manual* § 773. The vote on the pending question is taken *de novo*. 4 Hinds § 3052; 6 Cannon § 678. A Member's objection to a vote permitted under this rule is in order even though another Member has previously made the point of order that a quorum is not present. 97–2, Aug. 18, 1982, p 22037.

The objection to a vote permitted by Rule XV clause 4 applies only to votes on propositions requiring a quorum. Thus, an objection may not be raised under the rule to an affirmative vote on a motion to adjourn (81–1, July 25, 1949, p 10092) or to a vote on a motion incidental to a call of the House (4 Hinds § 2994; 6 Cannon § 681), neither of which require a quorum for adoption (§ 4, supra).

For further discussion of the ''automatic'' vote by the yeas and nays that ensues under Rule XV clause 4, see § 14, infra.

Effect of Postponement

Where a Member objects to a vote on a bill on the ground that a quorum is not present, and further proceedings are postponed by the Chair's announcement under Rule I clause 5, or by unanimous consent, the Speaker puts the question *de novo* when the bill is again before the House as unfinished business; Members then have the same right to object as when the question was originally put, and may again object at that time to the vote on the same ground. 89–1, Oct. 7, 1965, p 26243. Similarly, where objection

is raised to the failure of a quorum to vote on a motion, and the Speaker postpones the vote on the motion pursuant to the rules, further proceedings are automatically postponed and the question is put *de novo* when that vote recurs as unfinished business. 95–1, Sept. 26, 1977, p 30948; 96–1, Sept. 24, 1979, p 25876; *Manual* § 774a.

§ 8. Timeliness and Diligence in Raising Objections

In General

An objection to a vote because of the absence of a quorum must be timely raised. Such an objection comes too late when the Speaker has announced the result of the vote and a motion to reconsider laid on the table. Deschler Ch 20 §§ 13.23, 13.24; 92–2, May 31, 1972, p 19344. But such objections have been held to be timely and in order when they were made:

- After the Chair announced his opinion that the noes on a voice vote prevailed but before the House proceeded to other business. Deschler Ch 20 § 13.16.
- After a parliamentary inquiry which immediately followed the announcement of the result of a voice or division vote. 6 Cannon § 698; Deschler Ch 20 § 13.18.
- After a refusal of a yea and nay vote which followed a division vote. Deschler Ch 20 § 13.19.
- After a sufficient number have risen to order the yeas and nays but prior to the start of the roll call. Deschler Ch 20 § 13.1.

Timeliness in Seeking Recognition

An objection to a voice vote on the ground that a quorum is not present is timely even after the Chair announces the vote if the Member was on his feet seeking recognition at the time the question is put. 103–1, June 29, 1993, p ____. But the Speaker may decline to recognize a Member to object to a vote because of the absence of a quorum where the Member has not shown the proper diligence in seeking recognition. Deschler Ch 20 § 13.26. A Member must be on his feet and actively seeking recognition when the Chair announces the result of the vote in order to raise such an objection. 95–2, Apr. 20, 1978, p 10983. The mere fact that a Member is on his feet does not constitute notice to the Chair that he is seeking recognition to make such an objection. Deschler Ch 20 § 13.2.

§ 9. When Dilatory; Effect of Prior Count

In General

Although the presence of a quorum is a constitutional requirement (§ 1, supra), and the Speaker has on occasion expressed reluctance to hold a no-

quorum point of order dilatory for that reason (Deschler Ch 20 § 14.3), it has long been recognized as within the prerogative of the Chair to refuse to entertain a point of no quorum if he determines that it was made for purposes of delay, and where the presence of a quorum, as evidenced by an immediately preceding vote or quorum call, is apparent. 5 Hinds §§ 5724, 5725; 8 Cannon § 2808; Deschler Ch 20 § 14. Since Rule XV was amended to restrict recognition for points of no quorum, the use of repeated points of order as a dilatory tactic has lost its efficacy.

The Speaker may refuse to entertain a point of no quorum where a quorum has just been established by a call of the House and where no further business has been transacted. Deschler Ch 20 § 14.16. This practice was formalized in 1974, when the House adopted Rule XV clause 6(d), which states that, when the presence of a quorum has been ascertained, a further no-quorum point of order may not thereafter be made or entertained until additional business intervenes. *Manual* § 774c. Thus, when the presence of a quorum is disclosed by a roll call taken by electronic device, a further point of order that a quorum is not present may not be made until additional business intervenes. 94–1, Nov. 17, 1975, p 36914.

A similar practice is followed with respect to objections to a vote based on Rule XV clause 4. It is not in order to object to a vote on the grounds that a quorum is not present under this rule if the Chair has determined by a count that a quorum is present and no business has intervened. 97–2, Dec. 17, 1982, p 31951. Likewise, where the result of a division vote in the House demonstrates that a quorum is present, a Member may not object to the vote on the ground that a quorum is not present so as to precipitate an automatic call under Rule XV clause 4, where there has been no intervening business. 96–1, Nov. 16, 1979, p 32861.

Determination by the Speaker

The question of dilatoriness is not necessarily determined by the length of time since ascertainment of a quorum, but by the Speaker's opinion as to whether, under the circumstances, there is an intent to delay the business of the House (8 Cannon § 2804; Deschler Ch 20 § 14), it being apparent that a quorum remains on the floor. But where the presence of a quorum is not apparent or the Chair is uncertain, he will count the House. Deschler Ch 20 § 14.1. Likewise, where a division vote follows a quorum call, the Chair is not bound by the result of the division vote, but may count the House to determine that a quorum is still present. 94–1, Nov. 17, 1975, p 36914.

Effect of Intervening Business

The House rule precluding a further point of no quorum after the presence of a quorum has been ascertained is qualified by the phrase ''until additional business intervenes.'' Rule XV clause 6(d). It has been held that those precedents indicating that a point of no quorum is dilatory when it immediately follows a vote or a call of the House disclosing the presence of a quorum are not applicable where there is ''intervening business'' between the establishment of the quorum and the making of the point of no quorum. It has been held that such intervening business prevents the Chair from holding the point of order to be dilatory on its face. Deschler Ch 20 § 14.8. Accordingly, where the Speaker ascertains the presence of a quorum by actual count following a rejected demand for the yeas and nays, and a division vote is then had on the pending question, the division vote is intervening business (see 8 Cannon § 2804), permitting another objection to the lack of a quorum, and the Speaker must again count the House. Deschler Ch 20 § 14. Other intervening business sufficient to prevent a holding that the point of order is dilatory *per se* has included:

- Division votes following a quorum call. 94–1, Nov. 17, 1975, p 36914.
- A division vote following a roll call. 8 Cannon § 2804.
- Unanimous-consent request (Deschler Ch 20 § 14.7), such as for the correction of a roll call (Deschler Ch 20 § 14.8).

It has been held that the mere receipt of a message is not ''intervening business'' such as to prevent the Speaker from holding a no-quorum point of order dilatory. Deschler Ch 20 § 14.11.

§ 10. Withdrawal of Point of Order

A point of order that a quorum is not present may be withdrawn, provided the absence of a quorum has not been announced by the Chair; and such withdrawal does not require unanimous consent. Deschler Ch 20 § 18.5; 91–1, Nov. 6, 1969, p 33255. Where a Member has objected to a vote on a motion to suspend the rules on the ground that a quorum is not present, and the Speaker has announced that further proceedings on the motion would be postponed but has not announced the absence of a quorum, that Member may withdraw his point of no quorum and unanimous consent is not required. 93–2, Dec. 9, 1974, p 38608.

A point of no quorum may not be withdrawn after the absence of a quorum has been announced by the Chair (4 Hinds § 2928–2930; 6 Cannon § 657; Deschler Ch 20 § 18) even where the Member making the point of order attempted to withdraw it but was not observed by the Chair. 103–1, June 10, 1993, p ____. The point may not then be withdrawn even by unan-

imous consent, since the House may not conduct business, including the disposition of unanimous-consent requests, in the announced absence of a quorum. 95–1, Sept. 21, 1977, p 30083. The same rule is followed in the Committee of the Whole. Deschler Ch 20 § 18.6; 95–2, July 12, 1978, p 20569.

A point of no quorum may not be reserved or withheld after the Chair has announced that a quorum is not present, no business being in order until a quorum is established. Deschler Ch 20 §§ 18.10, 18.11.

C. Quorum Calls

§ 11. In General

In the House

A motion for a call of the House is recognized under general parliamentary law and under the U.S. Constitution. 4 Hinds § 2981. The Constitution authorizes a number smaller than a quorum to compel the attendance of absent Members. U.S. Const. art. I § 5.

House Rule XV authorizes three separate procedures for a call of the House. They are:

- The call of the House that ensues under clause 6(e)(2), adopted in 1977; that clause permits the Speaker in his discretion to recognize for a motion for call of the House at any time. See § 12, infra.
- The call of the House which is used in the absence of a quorum to compel the attendance of absent Members under clause 2(a); this call is initiated by at least 15 Members and is ordered on motion. See § 13, infra. The call under this clause is sometimes referred to as the ''old'' form of the call, clause 2(a) having been first adopted in 1789.
- The call of the House that is mandated by clause 4 whenever objection is raised to a vote taken in the absence of a quorum. *Manual* § 774b. This call is sometimes referred to as an ''automatic'' call, since it proceeds by operation of the rule and does not require a motion. See § 14, infra.

The rule enabling 15 Members to initiate a motion for a call of the House under clause 2(a) dates from the earliest Congresses, and for many years was the only rule for procuring the attendance of Members. 4 Hinds § 2982. The automatic call of the House under clause 4, having been provided for by rule in 1896, is described as the call of the House in the newer form; it superseded the old form of the call except in cases in which the absence of a quorum is established by some means other than a vote. 4 Hinds § 3041. The call of the House on motion under clause 2(a) is in order

when no question is pending (4 Hinds § 2990), whereas the automatic call under clause 4 ensues while the House is voting. *Manual* § 773.

In Committee of the Whole

The provisions of clauses 2(a), 4, and 6(e) of Rule XV, relating to quorum calls in the House do not apply in Committee of the Whole. Accordingly, although a point of order that a quorum is not present will lie in the Committee of the Whole when a question is put (see § 6, supra), a Member may not object to a vote in the Committee on the ground that a quorum is not present. 93–2, July 10, 1974, p 22667; 94–2, Apr. 6, 1976, p 9553. In Committee of the Whole the quorum call and the vote occur seriatim and not simultaneously as they do in the House under Rule XV clause 4. The requirement of and the procedures for obtaining a quorum in Committee of the Whole are found in Rule XXIII clause 2(a).

§ 12. The Motion for a Call

A motion for a call of the House is permitted under Rule XV by clause 6(e)(2), which gives the Speaker the discretion to recognize for such a motion. Under this clause, it ''shall always be in order for a Member to move a call of the House when recognized for that purpose by the Speaker.'' *Manual* § 774c. Such a motion is in order notwithstanding language in the same rule that a no-quorum point of order may not be entertained unless the Speaker has put a pending motion to a vote. Rule XV clause 6(e)(1). *Manual* § 774c. Under this rule, the Speaker may at any time in his discretion recognize a Member of his choice to make the motion. 95–1, Jan. 19, 1977, p 1719. The Speaker may extend recognition for such a motion even though the House is not voting, as when he recognizes for such a motion during the consideration of a veto message. 95–2, Oct. 5, 1978, p 38503. The motion is privileged if entertained by the Chair in his discretion, and may be entertained after another Member has been recognized but before he has begun his remarks. 95–2, Apr. 20, 1978, p 10983. The motion may also be entertained after the previous question has been ordered on a proposition but before the Chair has put the question thereon. 95–2, Oct. 14, 1978, p 38378. The motion is not debatable. 8 Cannon §§ 683, 688.

If the motion is rejected, the House proceeds with business. 96–2, June 27, 1980, p 17369. But if the motion is adopted by a roll call vote, and a quorum is established thereby, a call of the House must proceed unless rescinded by unanimous consent.

§ 13. The Call to Compel Attendance of Absent Members

In General

The rules of the House authorize a call to compel the attendance of absent Members when the call is ordered by at least 15 Members (including the Speaker). Rule XV clause 2(a). The motion may not be demanded by less than 15 affirmative votes, and without that number present, the motion for the call is not entertained. 4 Hinds § 2983. The motion requires a majority vote for adoption, and a minority of 15 (or more) favoring the call is not sufficient. 4 Hinds § 2984. The motion must yield to a motion to adjourn, if one is made, for an adjournment motion takes precedence over a call of the House. 8 Cannon § 2642.

If a majority votes to compel attendance under this rule, absentees are notified. *Manual* § 768. Warrants may be issued by order of a majority of those present, and those for whom no sufficient excuse is made may be arrested by the Sergeant at Arms. § 19, infra. Members who appear voluntarily are admitted to the Hall and report their names to the Clerk to be entered on the Journal as present. *Manual* § 768.

When a call of the House is ordered under this rule, the Speaker in his discretion directs the taking of the call by electronic device (*Manual* § 774b) or, by a call of the roll (*Manual* § 765).

§ 14. The Mandated Call

In General

Under Rule XV clause 4, a call of the House ensues whenever a quorum fails to vote on any question which requires a quorum, if in fact a quorum is not present and objection to the vote is made for that reason, assuming that the House does not adjourn. The rule provides for a call of the House and states that the yeas and nays ''shall at the same time be considered as ordered.'' *Manual* § 773. The call of the House under this clause is sometimes referred to as the ''automatic call'' because it is mandated under the conditions specified by the rule. 6 Cannon § 695. A yea and nay vote on the pending question is also mandated by clause 4.

Under this rule, the Speaker has the discretion to conduct the call by electronic device or to order a call of the roll by the Clerk. 93–1, May 16, 1973, p 15860; *Manual* § 773. When the roll is called by the Clerk, the roll is called twice, and those appearing after their names are called may vote. 4 Hinds § 3052. The Speaker may count the House to determine whether a quorum is present. If his count discloses a quorum, the Speaker declares that a quorum is constituted (Rule XV clause 4) and is not required to an-

nounce his actual count. 97–1, Sept. 30, 1981, p 22456. The call of the House under this rule serves a dual purpose—(1) that of showing the number of Members present for the purpose of making a quorum, and (2) that of allowing the Members to vote on the pending question. 4 Hinds § 3045.

Members who do not respond to the call are subject to arrest by the Sergeant at Arms. See § 19, infra. Members brought in by the Sergeant at Arms are noted as present, and given an opportunity to vote. The Speaker is authorized to declare that a quorum is constituted if those voting on the question together with those who are present make a majority of the House. *Manual* § 773. Such a declaration dispenses with further proceedings. See § 20, infra. The pending question is then decided by a majority vote of those who have appeared if a quorum responds. *Manual* § 773.

Invoking the Call

The automatic call of the House under Rule XV clause 4 may be invoked by a Member who rises following the announcement of a vote to state:

> Mr. Speaker, I make the point of order that a quorum is not present and object to the vote on the ground that a quorum is not present.

If no Member rises to object that a recorded vote or yea or nay vote discloses that a quorum is not present, the Speaker, on his own initiative, declares the absence of a quorum, thereby invoking the automatic call. Deschler Ch 20 § 2.

Application to Particular Votes

The automatic call of the House that ensues under Rule XV clause 4 when a quorum fails to vote is applicable whether the House is voting *viva voce* (6 Cannon § 697), by division (6 Cannon § 691), by tellers (4 Hinds § 3053), or by the yeas and nays (6 Cannon § 703), but does not apply when the House is voting on some question which does not require a quorum, such as a motion incidental to a call of the House. 4 Hinds § 2994; 6 Cannon § 681.

§ 15. Use of Electronic Equipment

In General

The Speaker is authorized to use the electronic equipment in the Chamber to record those voting or present on any quorum call. See Rule XV clause 5. *Manual* § 774b. The use of this equipment is not mandatory. The Speaker has the discretion, for example, to direct the Clerk to call the roll—in lieu of taking the vote by electronic device—where a quorum fails to vote

on any question and objection is made for that reason. Deschler Ch 20 § 4.2. The Speaker also has the discretion, under Rule XV, to direct that the quorum call be taken by clerk-tellers under clause 2(b) or by an alphabetical call of the roll under clause 1, rather than by electronic device. Deschler Ch 20 § 4.1.

Response Time

On a call of the House conducted by electronic device, the Members have ''not less than'' 15 minutes to respond. Rule XV clause 5(a). *Manual* § 774b. After the 15 minutes have expired, the Chair may allow additional time for Members to respond before announcing the result. Deschler Ch 20 § 4.3.

§ 16. Names Published or Recorded on a Call

The names of those Members who respond to a quorum call are entered in the Journal and published in the *Congressional Record*. Rule XV clause 5(a). *Manual* § 774b. When the call is taken by clerks, the clerks record the names of those present and note the names of absentees. *Manual* § 771b. And Members responding to a quorum call ordered on motion under Rule XV clause 2(a) must see that their presence is recorded in the appropriate manner to be entered on the Journal. *Manual* § 768. When an automatic call of the House ensues under Rule XV clause 4, Members brought in by the Sergeant at Arms are noted as present. *Manual* § 773.

Under Rule XV clause 3, any Member may demand that the names of those Members not voting be noted by the Clerk and recorded in the Journal, and that they be reported to the Speaker along with the names of those Members voting, in determining the presence of a quorum. *Manual* § 772. The Speaker may direct the Clerk to note the names of Members under this rule even on a vote on a question for which no quorum is necessary. 8 Cannon § 3152.

§ 17. Quorum Calls in Committee of the Whole

Regular and ''Notice'' Quorum Calls Distinguished

Quorum calls in the Committee of the Whole—to secure the presence of at least 100 Members—are governed by the provisions of Rule XXIII clause 2(a). That rule permits two kinds of quorum calls in the Committee: (1) a ''regular'' quorum call and (2) a ''notice'' or ''short'' quorum call. *Manual* § 863.

A ''regular'' quorum call is initiated under the first two sentences of Rule XXIII clause 2(a). That language sets forth the circumstances under

which the Chairman is to invoke the procedures normally available to the Speaker for quorum calls in the House under the applicable provisions of Rule XV. As noted above, Rule XV clause 5 allows at least 15 minutes for Members to respond, and requires the publication of the names of those Members voting or answering present (*Manual* § 774b). Generally, see §§ 15, 16, supra.

A ''notice'' or ''short'' quorum call is permitted under the last two sentences of Rule XXIII clause 2(a), as adopted in 1974. That provision permits the Chairman, at any time during a call, subject to his prior announcement, to determine that a quorum is present and to so declare. Proceedings under the call are then considered vacated, and the Committee resumes its business. *Manual* § 863. This provision permits the Chairman to announce in advance, at the time the absence of a quorum is ascertained, that he will vacate proceedings when a quorum appears. It also enables the Chairman to convert to a regular quorum call in the event that a quorum does not appear. 93–2, May 13, 1974, p 14148. The Chair need not convert to a regular quorum call precisely at the expiration of 15 minutes if 100 Members have not responded on a ''notice'' quorum call but may continue to exercise his discretion to vacate proceedings at any time during the entire period permitted for the conduct of the call by clause 5, Rule XV. See 93–2, July 17, 1974, p 23673.

When in Order

The first time that a Committee of the Whole finds itself without a quorum on any given day, the Chairman must invoke one of the quorum-call procedures that are available to him under the rules. (See Rule XXIII clause 2(a), and the Rule XV procedures referred to therein.) Thereafter, quorum calls are permitted during five-minute debate only when the Chairman has put a pending motion or proposition to a vote. And points of no-quorum during general debate are permitted only at the discretion of the Chairman. *Manual* § 863.

Method of Taking

Before installation of the electronic system in the Chamber, quorum calls in the Committee of the Whole were effected by a call of the roll. 4 Hinds § 2966. Under the modern practice, quorum calls are taken by electronic device, but the Chairman has the discretion to effect the call by an alphabetical call of the roll or by clerk-tellers. See Rule XXIII clause 2(a), which incorporates by reference clauses 1, 2(b), and 5, of Rule XV. Thus, the Chairman may direct that a ''notice'' quorum call be conducted pursuant to the provisions of Rule XV clause 2(b)—by depositing quorum tally cards

with clerk-tellers—in lieu of conducting the call by electronic device or a call of the roll. 98–1, July 13, 1983, p 18844.

The so-called automatic call authorized by Rule XV clause 4 in the House is not permitted in the Committee of the Whole. See Deschler Ch 20 § 7.

Reports as to Absentees

The Committee of the Whole rises and the Chairman reports the names of absentees to the House only in the event that a quorum fails to respond to the quorum call under Rule XXIII clause 2. The 96th Congress amended that rule to permit the Committee to continue its business following the appearance of a quorum so that the Speaker need not take the Chair to receive the Committee's report of absentees. 96–1, Jan. 15, 1979, p 8. Under the former practice, when the Committee of the Whole found itself without a quorum, the Committee would rise following the quorum call, the Chairman would report to the Speaker that he had caused the roll to be called to establish the presence of a quorum, names of the absentees would be spread on the Journal, and the House would then automatically resolve back into the Committee. 91–1, Apr. 21, 1969, p 9705.

§ 18. Motions in Order During the Call

Generally

With the exception of the motion to adjourn, no motion is in order during a call of the House except those in furtherance of the effort to secure a quorum. 6 Cannon § 682. Motions held not in order include:

- Motions to recess. 4 Hinds §§ 2995, 2996.
- Motions to dispense with further proceedings under the call. 4 Hinds § 2992.
- Motions to excuse Members from voting. 4 Hinds § 3007.
- Motions relating to deductions from the pay of Members. 4 Hinds § 3011.

Motions which are intended to secure a quorum and which are therefore in order during the call of the House include:

- Motions that the Speaker issue warrants for the arrest of absent Members. 6 Cannon § 681.
- Motions that the Sergeant at Arms take absent Members into custody. 4 Hinds § 3029; 6 Cannon § 685.
- Motions to require the Sergeant at Arms to report progress in securing a quorum. 6 Cannon § 687.

- Motions for the previous question on a proposition incident to a call of the House. 5 Hinds § 5458.
- Motions to reconsider a vote incident to a call of the House. 5 Hinds §§ 5607, 5608.

Motions to Adjourn

The motion to adjourn takes precedence over a call of the House. Deschler Ch 20 §§ 8.14, 8.15. And the vote on adjournment is taken before the call of the House even when the motion for the call was offered but not finally agreed to prior to the motion to adjourn. Deschler Ch 20 § 8. However, the motion to adjourn is not entertained after the call of the House has been ordered nor is it entertained during the call. Deschler Ch 20 §§ 8.22, 8.23. If the call is taken by roll call, the motion to adjourn again becomes in order after the conclusion of the second call of the roll if a quorum has not been established. Deschler Ch 20 § 8.19.

The rule which authorizes automatic votes by the yeas and nays (Rule XV clause 4) permits the House to adjourn in the absence of a quorum and prior to a call of the House. This same rule permits the Speaker to entertain a motion to adjourn after the call has been completed, if the motion has been seconded by a majority of those present, to be ascertained by actual count of the Speaker. *Manual* § 773.

§ 19. Securing Attendance; Arrests

Under Rule XV Clause 4

The attendance of absent Members may be secured under Rule XV clause 4, which makes provision for the automatic vote by the yeas and nays. Under this rule, the Sergeant at Arms ''shall forthwith'' proceed to bring in absent Members, whenever a quorum fails to vote, a quorum is not present, and objection is made for that reason. A Member who is arrested is brought by the Sergeant at Arms before the House and permitted to vote. *Manual* § 773. Compulsory attendance or arrest has been rare in the modern practice.

Under the conditions specified by this rule, the Sergeant at Arms is required to detain those who are present and to bring in absentees (4 Hinds §§ 3045–3048), and it is not necessary that he be specifically authorized to do so by a motion (Deschler Ch 20 § 5.14) or by a resolution adopted by those present (4 Hinds § 3049). But to actually make an arrest under this rule, the Sergeant at Arms must have in his possession a warrant signed by the Speaker. Deschler Ch 20 § 5.10 (note). Although the Speaker possesses full authority to issue a warrant of arrest for absent Members under this rule

(6 Cannon §§ 680, 702) he usually does not do so without House authorization (Deschler Ch 20 § 5.10). The warrant takes the following form (from 4 Hinds § 3041):

> To _____, Sergeant at Arms of the House of Representatives, or his deputies:
>
> Whereas Rule XV clause 4 of the House of Representatives provides as follows: _____
>
> And whereas the conditions specified in said rule have arisen, and the following-named Members of the House are absent, to wit: _____
>
> Now, therefore, by virtue of the power vested in me by the House, I hereby command you to execute the said order of the House, by taking into custody and bringing to the bar of the House said above-named Members; and make due return in what manner you execute the same.
>
> [Sealed, signed by the Speaker, and attested by the Clerk]

When arrested, Members are (1) arraigned at the bar, (2) discharged from arrest, (3) questioned by the Speaker as to whether or not they wish to vote, and (4) permitted to vote. See 4 Hinds § 3044.

Under Rule XV Clause 2(a)

The use of the office of the Sergeant at Arms to procure the presence of Members in the Chamber is also permitted by Rule XV clause 2(a), which, as previously noted (§ 13, supra) authorizes 15 Members to initiate a motion to compel the attendance of absent Members. Under the rule, a majority of those present may order officers appointed by the Sergeant at Arms to send for and arrest absentees for whom no excuse is made. Members whose attendance has been secured in this manner are detained until discharged under conditions determined by the House. *Manual* § 768. Those present may prescribe a fine as the condition on which an arrested Member may be discharged. 4 Hinds § 3013.

Under this rule, in the absence of a quorum in the House, a motion (or other proposition) to arrest absentees and bring them into the Chamber is in order. 4 Hinds § 3018; Deschler Ch 20 § 5.6. To compel the attendance of absentees by arrest under this rule, the motion:

- Must be supported by 15 affirmative votes, and those voting to compel attendance must be in the majority. Deschler Ch 20 § 5.9 (note).
- Is in order after a single calling of the roll. 4 Hinds § 3015.
- Is in order during proceedings to secure a quorum. 6 Cannon § 685.
- Is not debatable. 6 Cannon § 686.
- May not order the arraignment of absent Members at a future meeting of the House. 4 Hinds §§ 3032–3034.

The motion for the arrest of absentees is in the form of an order to the Sergeant at Arms, as follows [from Deschler Ch 20 § 5.11]:

> *Ordered*, That the Sergeant at Arms take into custody and bring to the bar of the House such Members as are absent without leave.

Unless directed by an appropriate motion, the Sergeant at Arms, under Rule XV clause 2(a), has no authority to compel the attendance of absent Members. Deschler Ch 20 § 5.9. A motion which merely states that those who are not present are to be ''sent for'' and ''returned,'' and not allowed to leave until the completion of certain business, has been interpreted as requiring the Sergeant at Arms to notify absentees but not as bestowing on him the authority to arrest them and bring them into the Chamber under custody. Deschler Ch 20 § 5.3.

After agreement to the appropriate motion, warrants for the arrest of absent Members are signed by the Speaker or Speaker pro tempore. Deschler Ch 20 § 5. Leave for a committee to sit during sessions does not release its Members from liability to arrest. 4 Hinds § 3020.

Closing or Locking the Chamber Doors

Although it was Jefferson's view that as a matter ''[o]f right, the door ought not to be shut'' (*Manual* § 380), the House rules have from time to time given the Speaker the authority to order the closing of the Chamber doors in connection with securing a quorum. Deschler Ch 20 § 6. The current rule, adopted in 1972, states that ''. . . the doors shall not be closed except when so ordered by the Speaker'' pursuant to a quorum call. Rule XV clause 2(b). *Manual* § 771b. The precursor of this rule gave the Speaker the discretion, in securing a quorum, to order the doors closed or even locked. Deschler Ch 20 § 6.2 (note). Speaker McCormack in 1968 ordered the doors to the Chamber closed and locked during a call of the House pursuant to the rule, and instructed the Doorkeeper to let no Members leave the Hall. Deschler Ch 20 § 6.3.

The Speaker has no authority to order the doors to the Chamber locked except during a call of the House. Deschler Ch 20 § 6.4. In 1919, Speaker Gillett, after putting the question on ordering a call of the House, directed the Doorkeeper to lock the Chamber doors, but then sustained a point of order that the doors should be closed only on a call of the House. 6 Cannon § 703. But in one instance the doors were locked ''until disposition of the pending business''—the reading of the Journal; this action was taken pursuant to House order rather than by order of the Speaker. Deschler Ch 20 § 6.5.

§ 20. Dispensing With Further Proceedings

Under the former practice, after a quorum had responded on a call of the House, it was necessary to move to dispense with further proceedings under the call before the House could proceed with pending business. See 4 Hinds § 3039. In 1979, the House amended Rule XV clause 6(e)(2) to eliminate the motion to dispense with further proceedings under a call of the House following establishment of a quorum, unless the Speaker recognizes for an appropriate motion. *Manual* § 774c. Under this rule, when a quorum has been established pursuant to a call of the House, the Speaker ordinarily simply announces that further proceedings under the call are dispensed with. See 96–1, Feb. 28, 1979, pp 3467, 3468. However, the Speaker still has the discretion to recognize for a motion to that effect under Rule XV clause 6(e).

It has been held that the motion to dispense with further proceedings pursuant to a call is:

- Not entertained until a quorum responds on the call. 6 Cannon § 689.
- Not preferential to a motion to adjourn. 8 Cannon §§ 2643, 2644; Deschler Ch 20 § 9.4.
- Not subject to challenge on a point of order of no quorum. Deschler Ch 20 §§ 9.12, 9.13.
- Not debatable, amendable, or subject to the motion to table. Deschler Ch 20 § 9.1; 91–2, Dec. 18, 1970, p 42504.
- In order in the absence of a quorum, and so does not force an automatic call under Rule XV clause 4. Deschler Ch 20 §§ 9.15, 9.16.

Reading, Passage, and Enactment

Research References

U.S. Const. art. I § 7
4 Hinds §§ 3364–3481
7 Cannon §§ 1027–1083
7 Deschler Ch 24 §§ 11–16
Manual §§ 104, 105, 396, 397, 497, 498, 573–577, 830–833

§ 1. In General; Stages in Passage

The various steps in the legislative process begin with the introduction of a bill (and the ''first reading'') and include its referral to committee, committee consideration, the reporting of the measure to the House, and consideration and debate in the House or the Committee of the Whole (where the ''second reading'' occurs). These matters are covered elsewhere in this work. See INTRODUCTION AND REFERRAL; COMMITTEES; COMMITTEES OF THE WHOLE; and CONSIDERATION AND DEBATE. The checklist below focuses on the steps that follow the ordering of the previous question on a bill through the enactment of the bill into law.

- Previous question ordered on bill and all amendments to final passage.

  Note: When the previous question is ordered, debate is terminated and the House then votes first on any pending amendment or amendments reported from the Committee of the Whole. If the previous question is not ordered, the

bill and any amendments thereto are open to debate and amendment. See PREVIOUS QUESTION.

- Demand for separate vote on amendments adopted in the Committee of the Whole.

  Note: A demand for a separate vote in the House on an amendment adopted in the Committee of the Whole is in order following the Speaker's announcement that the previous question has been ordered (see *Manual* § 337), but such separate votes are not actually taken until after the House votes on the remaining amendments en bloc. 89–1, July 9, 1965, p 16280. A Member cannot demand a separate vote on an amendment *rejected* in the Committee of the Whole.

- Vote on amendments en bloc.

- Separate vote on amendments on which separate votes have been demanded in the order of appearance in the bill. *Manual* § 337. See also AMENDMENTS.

- Question on engrossment and third reading (by title only).

  Note: This is normally a *pro forma* question. Engrossment is the printing of the measure on special paper, and the ''third reading'' requires merely a reading of the title. *Manual* § 830. The question is ordinarily approved automatically by unanimous consent but a record vote is in order and a negative vote rejects the bill. On Senate bills the question is put on the third reading, but the question on engrossment is not put since such bills are engrossed by the Senate. Engrossment generally, see § 6, infra. Any amendment to a preamble of a joint resolution should be made after engrossment and pending the third reading. *Manual* § 414.

- Motion to recommit.

  Note: A Member opposed to the bill may offer a motion to recommit the measure to committee. He may offer a simple motion to recommit (which if adopted stops further consideration of the bill) or a motion to recommit with instructions. *Manual* § 787. Only one proper motion can be offered. See REFER AND RECOMMIT. Ordinarily, the instructions are to the committee to report the bill back to the House ''forthwith'' with an amendment.

- Previous question on motion to recommit.

  Note: Amendments to the motion cannot be offered if the previous question on the motion has been ordered. *Manual* §§ 787, 788. This is in accordance with the House rule giving a higher privilege to the motion for the pre-

vious question than to the motion to amend. *Manual* § 782. If the previous question is rejected, and an amendment is offered, the previous question is again moved following disposition of the amendment.

- Vote on motion to recommit (as amended or not).

  Note: If recommitted, reported back ''forthwith'' with amendments, and amendments are agreed to, the vote recurs on engrossment and third reading.

- Question on passage of bill.

  Note: As a general rule, after a bill is passed there can be no further alteration of it in any way. On rare occasions, by vacating the proceedings following the amendment stage (by unanimous consent), a further amendment may be considered. The motion to reconsider may also be used to revisit passage or a step leading thereto. See RECONSIDERATION. And the Clerk may be authorized to make changes in the engrossed copy by unanimous consent. *Manual* § 500.

- Amendments to title of bill.

  Note: Amendments to the title are not in order until after the bill itself is passed, and are not debatable. *Manual* § 822.

- Motion to reconsider.

  Note: While a motion to reconsider is pending, the bill cannot be sent to the Senate.

- Motion or unanimous-consent request to lay the motion to reconsider on the table.

  Note: The *pro forma* motion or unanimous-consent request to table the motion to reconsider is used to preclude subsequent motions to reconsider, and it is the accepted parliamentary mode of making the vote in question final. In practice, the two motions are often made simultaneously. 8 Cannon § 2784. The Speaker himself often performs this perfunctory role, as when he declares, after the announcement of a vote, ''without objection, a motion to reconsider is laid on the table.'' Deschler Ch 23 § 34. Generally, see RECONSIDERATION.

- Transmittal of bill to Senate.

  Note: After passage of a bill in the House, the engrossed copy is attested by the Clerk of the House and transmitted to the Senate.

- Consideration of bill by Senate.

- Return of bill to House.

Note: If a House bill is passed by the Senate without amendment, the bill when messaged to the House is at once enrolled under the supervision of the Committee on House Oversight. *Manual* § 697a. See § 10, infra. If returned with amendment, the bill may be referred to the House committee having jurisdiction, although such amendments are often considered directly in the House by unanimous consent, by motion to suspend the rules, or under a special order. When Senate amendments need not be considered in the Committee of the Whole, they are laid before the House directly from the Speaker's table. See SENATE BILLS; AMENDMENTS BETWEEN THE HOUSES.

- Consideration of Senate amendments in the House.

  Note: When taken up by the House, Senate amendments are considered by unanimous consent or pursuant to a special rule or a motion to suspend the rules. Senate amendments are agreed to, disagreed to, or agreed to with amendment. *Manual* § 528–528d. For precedence of the various motions, see SENATE BILLS; AMENDMENTS BETWEEN THE HOUSES.

- House-Senate conference.

  Note: If there is disagreement between the two Houses on any amendment, a conference may be sought by one House and agreed to by the other. A committee of conference consisting of managers on the part of the House and Senate then meets to resolve the disagreement. *Manual* §§ 530–556. See CONFERENCES BETWEEN THE HOUSES.

- Submission of conference report.

  Note: The committee of conference having met, a report embodying their recommendation is submitted to the House and the Senate.

- Adoption of conference report.

  Note: Approval by the House and Senate of the conference report and mutual agreement to any amendments in disagreement constitutes final congressional approval of the bill. The two Houses act seriatim on the report, that House agreeing to the conference normally acting first. However, a conference report must be acted on as a whole, and either agreed to or disagreed to in its entirety. Rejection of a portion of a conference report under a special procedure permitting that vote results in rejection of the entire report. If the conferees disagree on certain numbered amendments, they are submitted to each

Chamber individually and acted upon separately. Every amendment must be agreed to in identical form by both Houses before congressional action on the bill is complete. See CONFERENCES BETWEEN THE HOUSES.

- Enrollment of bill.

  Note: A bill that is finally passed by both Houses is enrolled by the House in which it originated—that is, it is printed on a special paper under the supervision of an enrolling clerk. After its accuracy has been approved by the Committee on House Oversight, an enrolled bill is reported to the House and Senate, where it is signed by the Speaker and Vice President, respectively. *Manual* § 697a. See § 10, infra.

- Delivery of bill to the President for approval or veto.

  Note: An enrolled bill, having been signed by the Speaker and Vice President, is delivered to the White House for Presidential approval. The President has 10 days (excluding Sundays) in which to sign the bill or veto it by returning it to the originating House, with his objections. See also VETO OF BILLS.

- Passage of bill over Presidential veto.

  Note: A veto override requires an affirmative two-thirds yea and nay vote, a quorum being present, in each Chamber. If a vote to override a veto succeeds in the originating House, the measure is sent to the second House. If the veto is overriden there by a two-thirds vote, the bill becomes law without the President's signature. *Manual* § 109.

- Deposit of measure in National Archives.

  Note: When an enrolled bill is signed by the President or enacted over his veto, it becomes a public law and is sent to the National Archives and published in the *Statutes at Large*, an annual volume that compiles all bills that become law. If passed by the two Houses over the President's veto, it is transmitted to the Archivist by the House last acting on it.

§ 2. Readings

The reading of a bill is an essential, although unobtrusive, step in its passage (Deschler Ch 24 § 11). The First Congress adopted a rule requiring three separate and distinct readings of each bill brought before the House. 4 Hinds § 3391.

The modern rule provides that a bill or joint resolution must be read three times, the first time by title, the second time in full, and the third time

by title. Rule XXI clause 1 (*Manual* § 830). The second or full reading is frequently waived by unanimous consent, under suspension of the rules, or by special rule from the Committee on Rules (*Manual* § 831). The three readings referred to in Rule XXI are to be distinguished from the procedures involved in reading a bill for amendment. See AMENDMENTS. In practical terms, the ''first reading'' in the Committee of the Whole is the second reading in full contemplated by the rule while the reading for amendment by paragraphs or sections is the second actual reading in Committee of the Whole.

Reading of papers in debate, see CONSIDERATION AND DEBATE.

§ 3. — First Reading

Under Rule XXI clause 1, the first reading of a bill in the House is by title only. *Manual* § 830. Formerly, a bill was read the first time by title at the time of its introduction before the House; but since 1890 all bills have been introduced by filing them with the Clerk (placing them in the bill ''hopper'' at the rostrum). 4 Hinds § 3391. Today, the titles of all bills introduced are printed in the Journal and Record, thus carrying out the real purposes of the first-reading rule. *Manual* § 831.

§ 4. — Second Reading

Generally

The second reading of a bill—to be in full—normally occurs when it is first taken up for consideration in the Committee of the Whole; although it is called the ''first reading'' in Committee of the Whole, the reading for amendment by paragraphs or sections is the second actual reading in Committee of the Whole. 95–1, Apr. 28, 1977, p 12635.

When considered in the House alone, bills are read the second time—in full—when taken up for action (4 Hinds § 3391), although such reading is often dispensed with by unanimous consent. 97–2, June 24, 1982, pp 15168, 15172. The Clerk and not the Speaker or Chairman of the Committee of the Whole reads bills on second reading. *Manual* § 428. If consideration of the bill is not completed on the day it is called up, it is read by title when called up on subsequent days.

Demanding a Reading in Full; Dispensing With Readings

In general, any Member may demand a full reading of a bill before general debate thereon begins, provided the bill has not previously been read. 7 Deschler Ch 24 § 11.1 (note). In practice, however, verbatim readings are usually dispensed with by unanimous consent (95–2, May 17, 1978, p

14147), by suspension of the rules, or pursuant to a special rule providing for the consideration of the bill (Deschler Ch 24 § 11; *Manual* § 830). Special rules of this nature are now common practice.

It has been held that a motion to dispense with the reading of a bill in full is not in order. 8 Cannon §§ 2335, 2436. But a motion to suspend the rules and read by title only has been permitted. 7 Cannon § 1057. And the House can dispense with the reading in Committee of the Whole by motion if the motion is made privileged, as when reported from the Committee on Rules. Deschler Ch 24 § 11.1 (note).

Measures Subject to Reading in Full

The rule (Rule XXI clause 1) requiring a reading ''in full'' refers only to ''bills and joint resolutions,'' but a reading in full should extend to all concurrent and simple resolutions as well, when taken up for consideration in the House. 95–2, July 12, 1978, p 20494. Unless the reading is dispensed with, it is the text of the measure as originally introduced which is read. Proposed committee amendments are not included in this reading. Deschler Ch 24 § 11. Even when a substitute amendment has been reported to the House, it is the original bill that must be read unless dispensed with by unanimous consent. 7 Cannon § 1054.

Interruption of Reading

The reading of a bill may be interrupted by the presentation of a matter of higher privilege, such as the reception of a message, a question of privilege, or the arrival of the time designated for adjournment. See 5 Hinds § 6448 (reading interrupted by presentation of conference report).

§ 5. — Third Reading

The third reading of a bill is by title only under Rule XXI clause 1 and comes after the order for engrossment, and before the question is put on passage of the bill. *Manual* § 830. The Speaker states: ''The question is on the engrossment and third reading of the bill.'' This is a *pro forma* question that is routinely put and routinely approved by voice vote just before the measure itself is put to a vote. However, the yeas and nays may be ordered on the question of engrossment and third reading. 86–1, Aug. 31, 1959, p 17404. And if the question is put to a vote and decided in the negative, the bill is considered rejected. 4 Hinds § 3420. If this reading is omitted and the House passes the bill, the vote is subject to a motion to reconsider in order to remedy the omission. 4 Hinds § 3406.

At one time, a Member could demand a reading *in full* of the engrossed copy, but this procedure was stricken from the rules in 1965 (Deschler Ch 24 § 11).

§ 6. Engrossment of House-passed Bills

After a bill has passed the House, the Clerk prepares a certified copy for transmission to the Senate. This copy is the official copy of the measure as passed by the House, and is referred to as the ''engrossed'' copy. Engrossment is the process by which a bill is printed on special paper under the supervision of the Clerk of the House. House-passed measures or House amendments to Senate measures are engrossed on distinctive blue paper. The Clerk attests to the engrossment, and his signature gives rise to the presumption that the bill was correctly engrossed. 4 Hinds § 3428. Senate bills and amendments are engrossed on white paper and bear the signature of the Secretary of the Senate. A limited number of the blue and white engrossments are printed for official use of the House and the Senate and are the prints used by conferees in working out their agreements.

The engrossment of a House-passed bill is under the control of the House, not of the Committee of the Whole. Thus, a unanimous-consent request relating to the engrossment of a bill is properly made in the House following the passage of the bill and is not in order in the Committee of the Whole. 92–1, June 4, 1971, p 18049.

Engrossed bills are to be distinguished from ''enrolled'' bills; after a bill has passed both the House and the Senate, an ''enrolled'' bill is prepared on parchment for the signatures of the Presiding Officers of the two Houses, and for transmittal to the White House for the President's approval. See § 10, infra.

§ 7. — Correcting Errors in Engrossment

Prior to Transmittal of Bill to the Senate

Where the House has not messaged its legislative action to the Senate, the House may, by unanimous consent, authorize the Clerk to make technical corrections in the engrossment of a House-passed bill. This procedure may be used, for example, to direct the Clerk to correct or change the table of contents, to amend or strike out cross references (Deschler Ch 24 § 12.12), or to change section numbers and make other technical changes (Deschler Ch 24 § 12.10). See also 91–2, June 4, 1970, p 18415; 93–1, June 28, 1973, p 22103. The unanimous-consent procedure may also be used to authorize the Clerk to make designated substantive changes in the engrossment of a bill just passed by the House, but the Chair may require that they

be read by the Clerk before entertaining the unanimous-consent request. 99–1, Feb. 27, 1985, p 3888; 99–1, June 27, 1985, p 17875.

The engrossment of House amendments to Senate bills that have not been messaged to the Senate may likewise be corrected by unanimous consent, the Clerk being directed to make the necessary change. Deschler Ch 24 §§ 12.8, 12.9, 12.11. Thus, in one instance, by unanimous consent, the Clerk was authorized to correct the engrossment of a House amendment to a Senate bill passed on the preceding day to reflect the adoption in Committee of the Whole of an amendment that was inadvertently not reported to the House. 94–1, May 7, 1975, p 13363. The same procedure may be used to correct the engrossment of a House amendment to a Senate bill by deleting a provision inadvertently included in the measure voted on. 99–2, Oct. 9, 1986, p 30102.

After Transmittal of Bill to Senate

After a bill has been messaged to the Senate, any corrections must be initiated by requesting the Senate to return the bill. By resolution, the House requests the Senate to return the bill and authorizes the Clerk to reengross the bill with specified changes. Deschler Ch 24 § 12.5; 92–1, Nov. 17, 1971, p 41798. Where both Houses have acted on the measure, a concurrent resolution is required to effect changes in the final enrollment. Deschler Ch 24 § 12.6. A resolution in the House requesting the return of a bill of the Senate to correct an error made by the Clerk in preparing the engrossment of a House amendment was treated as a question of privilege under Rule IX. 3 Hinds § 2613; 97–2, Oct. 1, 1982, p 27172.

§ 8. — Correcting Printing Errors; ''Star Prints''

The engrossed copy of a bill may be ''star printed'' (that is, reprinted with a star to indicate the reprinting) to rectify a Government Printing Office typographical error. This procedure is designed to substitute a reprinted bill correcting the error and showing the exact form in which the bill was actually passed. Deschler Ch 24 § 12.1.

The star print procedure is appropriate to correct GPO printing errors in a bill up until such time as both Houses have acted on the measure. Thereafter, a concurrent resolution is used to correct printing errors. Deschler Ch 24 § 14.7 (note).

§ 9. Transmittal of Bills Between the Houses

A bill having passed one House and been engrossed and attested, it is transmitted to the other House by message. Deschler Ch 24 § 12.1. And it

is possible for one House to message the other to return a bill for the correction of errors or otherwise. 3 Hinds § 2613; 4 Hinds §§ 3460–3465. A request of the Senate for the return of a bill is treated as privileged in the House, and must be presented to the House for consideration. 86–1, Sept. 14, 1959, p 19715. The request may be disposed of by unanimous consent or by motion. 91–2, Sept. 9, 1970, p 30850; 93–1, July 10, 1973, p 23027. The question is put to the House without debate (91–2, Dec. 29, 1970, p 43776) unless debate is permitted under a reservation of the right to object (95–1, Aug. 3, 1977, p 26538). See POINTS OF ORDER; PARLIAMENTARY INQUIRIES. The House may by unanimous consent agree to a request of the Senate for the return of a Senate bill even where the bill has been referred to a House committee. 86–2, Jan. 21, 1960, p 1022; 91–1, July 10, 1969, p 19095.

§ 10. Enrollment of Bills Passed by Both Houses

When a bill or joint resolution has passed both Houses, the papers are delivered to the House that originated the measure, and a copy—called the ''enrolled bill''—is prepared. If the bill originated in the House, it is enrolled under the supervision of the Committee on House Oversight. *Manual* § 697a. The enrollment is printed on distinctive paper under special supervision of the enrolling clerks of the House or the Senate. Deschler Ch 24 § 14.1. This printing requirement (1 USC § 106a) may be waived by the enactment of a joint resolution (99–1, Dec. 10, 1985, pp 35741, 35742), or, during the last six days of the session, by the adoption of a concurrent resolution (99–1, Dec. 16, 1985, p 36577). The enrolled bill is signed by the Presiding Officers of the House and the Senate and is delivered to the President for his approval. See §§ 11–14, infra. If approved by the President, the measure is sent to the National Archives. 1 USC § 106a.

It has been held that when an enrolled bill has been signed by the President, its validity cannot be questioned on account of the pendency of a motion to reconsider, the signing of the enrolled bill by the Speaker and Vice President being complete and unimpeachable evidence of its passage. See *Field* v *Clark,* 143 US 650.

§ 11. — Committee Approval; Certification and Signing

Approval and Certification

A House-enrolled bill must be approved as to form and accuracy by the Committee on House Oversight (*Manual* § 697b), although this requirement has on rare occasions been waived by unanimous consent (4 Hinds § 3452). In addition, House-enrolled bills are certified by the Clerk as having origi-

nated in the House. Senate enrollments are delivered to the House after examination and certification by the Secretary of the Senate. Deschler Ch 24 § 15.

Signing

Enrollments are signed first by the Speaker and then by the President of the Senate. 4 Hinds § 3429. In early Congresses, the Speaker could not sign an enrolled bill in the absence of a quorum. 4 Hinds § 3458. Today, under a rule adopted in 1981, the Speaker has standing authority to sign enrolled bills even if the House is not in session (*Manual* § 624), and bills passed at one session may be signed by the Speaker at the next session (7 Cannon § 1075).

Signing by the Speaker Pro Tempore

A Speaker pro tempore elected by the House (2 Hinds § 1401), or whose designation by the Speaker has received the approval of the House (2 Hinds § 1404; 6 Cannon § 277), signs enrolled bills (Rule I clause 7), but a Member merely called to the Chair during the day (2 Hinds § 1399; 6 Cannon § 276), or designated only by the Speaker (2 Hinds § 1401), does not exercise this function.

§ 12. — Corrections in Enrollment

Generally; Authorizing Corrections Before Enrollment

The Clerk of the House may be authorized by concurrent resolution to make certain corrections in the enrollment of a House bill. 7 Cannon § 1068; 87–2, Oct. 1, 1962, p 21574; 88–1, Dec. 17, 1963, p 24823. The authorizing resolution may be agreed to by one House even before the bill to be corrected has passed the other House. In one instance the House agreed to a concurrent resolution correcting the enrollment of a joint resolution prior to the consideration of a conference report on that measure. 99–1, Dec. 11, 1985, pp 35957, 35958.

Corrections made in this manner often involve nothing more than spelling errors (87–2, June 14, 1962, p 10501), or a correction in the title of a bill (91–2, Mar. 5, 1970, p 6193). In one case, however, the resolution authorized the Clerk, in the enrollment of a House bill, to make extensive technical corrections and to delete a provision contained in the conference report which was outside the scope of the differences committed to conference. 93–2, Aug. 20, 1974, pp 29216–18.

Corrections in enrolled bills are normally carried out by the House that originated the bill, but the authorizing resolution may originate in either House. Thus, the House may originate a concurrent resolution directing the

Secretary of the Senate to make corrections in the enrollment of a Senate bill. 95–2, Oct. 14, 1978, p 38319.

Authorizing Corrections After Enrollment

The correction of a bill, even after its enrollment, may be ordered by concurrent resolution of the two Houses. 4 Hinds § 3451; 7 Cannon § 1041. If the enrolled bill has not been signed, the resolution may simply direct the Clerk to reenroll the bill with a correction. Deschler Ch 24 § 14.14. If the enrolled bill has been signed, the two Houses by concurrent action may authorize the rescission or cancellation of the signatures and a reenrollment (4 Hinds §§ 3453–3459; Deschler Ch 24 § 14.13), and in the same way the signatures may be canceled on a bill prematurely enrolled (4 Hinds § 3454). See also Deschler Ch 24 §§ 15.12, 15.13. The resolution may not only rescind the action of the Speaker and President of the Senate in signing the bill, but may direct the Clerk to reenroll the bill with certain changes or provide for its return to the Senate. Deschler Ch 24 §§ 14.9–14.11.

Correction or Recall of Bills Delivered to the President

Corrections or changes in enrolled bills which have been delivered to the White House but not signed into law have traditionally been effected by way of concurrent resolution, considered by unanimous consent, requesting the return of the bill and vacating the signatures of the Speaker and the President of the Senate. The resolution may direct a reenrollment with corrections by the Clerk of the House or Secretary of the Senate, whichever is appropriate. 4 Hinds §§ 3507, 3508; Deschler Ch 24 §§ 16.1–16.4. Bills corrected under this procedure are resubmitted to the President for his approval. However, in one instance, a concurrent resolution was used to request the recall of a bill from the White House, to rescind the signatures of the two Presiding Officers, and to postpone the bill indefinitely. Deschler Ch 24 § 16.5.

The use of concurrent resolutions to recall a bill to correct an error is appropriate only with respect to bills that have not been signed, or presumed not to have been signed, by the President. 4 Hinds § 3507 (note). Once the bill has been signed, it becomes law and changes in it can only be effected by amending the measure pursuant to the passage of a bill or joint resolution. Thus, where the President signed a bill from which a section had been inadvertently omitted during enrollment, the Congress immediately adopted a joint resolution amending the law and inserting the omitted section. Deschler Ch 24 § 14.19.

Consideration of Resolution

Concurrent resolutions making corrections in an enrolled bill or in its enrollment are not privileged for consideration and are normally considered by unanimous consent. 92–2, Mar. 8, 1972, p 7573; 92–2, Oct. 5, 1972, p 34064. If an objection to the consideration of the resolution is made, the resolution may be considered under suspension of the rules (93–2, Aug. 5, 1974, p 26796), or be made privileged by a special rule reported from the Committee on Rules (93–2, Dec. 13, 1974, p 39596). Such a resolution may also be taken up pursuant to a special rule from the Committee on Rules ''hereby'' adopting that resolution. 100–2, May 4, 1988, p 9865.

§ 13. Delivery of Measures to the President

Bills

The Constitution requires that every bill which passes the House and the Senate must be presented to the President of the United States for his approval. U.S. Const. art. I § 7. In early Congresses, a joint committee took enrolled bills to the President (4 Hinds § 3432), but in the later practice the chairman of the committee in each House having responsibility for the enrollment of bills also has the responsibility of presenting the bills from that House to the President. Such presentation is recorded in the Journal. *Manual* § 577.

Enrolled bills pending at the close of a session have at the next session of the same Congress been ordered to be presented as if no adjournment had taken place. 4 Hinds §§ 3487, 3488. Enrolled bills signed by the Presiding Officers at one session have been sent to the President and approved at the next session of the same Congress. 4 Hinds § 3486. And bills enrolled in one Congress have been presented to the President and been signed by him after the convening of the next Congress. *Manual* § 577.

Joint Resolutions

A joint resolution is a bill so far as the processes of Congress are concerned (4 Hinds § 3375), and, with the exception of joint resolutions proposing amendments to the Constitution (5 Hinds § 7040), all joint resolutions are sent to the President for his approval. *Manual* § 397; 4 Hinds § 3483. That joint resolutions proposing amendments to the Constitution need not be submitted to the President has been settled since the earliest Congresses. Such joint resolutions, after passage by both Houses, are presented to the Archivist (1 USC § 106b).

Concurrent Resolutions

It has been the uniform practice of the Congress, since the organization of the government, not to present concurrent resolutions to the President for his approval, and to avoid incorporating in such resolutions any matter of strict legislation requiring such presentation. They have been used merely to express the sense of Congress on a given subject, to adjourn for longer than three days, or to accomplish some purpose in which both Houses have a common interest, but with which the President has no concern. Such resolutions have ''never embraced legislative provisions proper and hence have never been deemed to require executive approval.'' 4 Hinds § 3483. See also *Manual* § 396.

Recess

Research References
5 Hinds §§ 6663–6671
8 Cannon §§ 3354–3362
Manual §§ 586, 782, 784

§ 1. In General

The Speaker has the discretionary authority to declare a brief recess when no question is then pending before the House. Rule I clause 12 (adopted in 1993). Recesses may also be declared by the Speaker pursuant to authority granted by the House (§ 2, infra). They are not permitted in the Committee of the Whole except with the permission of the House. 5 Hinds §§ 6669–6671; 8 Cannon § 3357.

Recess is to be distinguished from adjournment. Recesses are taken during a legislative day, whereas normally adjournments are taken from day to day; and an adjournment terminates a legislative day. Another distinguishing feature is that, during a recess, the Mace remains in place on the rostrum, indicating that the House continues in a receptive mode for business. Bills may be introduced and reports filed through the hopper.

When the hour previously fixed for a recess arrives, the Chair declares the House in recess even in the midst of a division vote. 5 Hinds § 6665. But a recess may not interrupt a call of the roll (5 Hinds § 6054) or a recorded vote (5 Hinds § 6055). The Speaker may not declare a recess during a roll call, the taking of a vote by yeas and nays or a recorded vote; this is so even though the House has previously given him authority to declare a recess at any time. 5 Hinds § 6054.

§ 2. House Authorization; Motions

House authorization to declare a recess may be given to the Speaker by motion (Rule XVI clause 4; *Manual* §§ 586, 782), by unanimous consent (99–2, Apr. 23, 1986, p 8474), suspension, or by special order (94–1, Feb. 6, 1975, p 2641; 104–1, Dec. 21, 1995, p ____). The recess authority granted to the Speaker may be for a single recess on a given day (87–2, July

2, 1962, p 12625, 92–1, May 20, 1971, p 16148), for several recesses subject to the call of the Chair (93–1, Apr. 30, 1973, p 13576) or for several days (104–1, Dec. 21, 1995, p ____). However, no recess declared by the Speaker or authorized by the House alone can exceed three days since that would violate the constitutional requirement for Senate acquiescence. U.S. Const. art. I § 5. See also § 3, infra.

The Speaker may also be authorized to declare a recess:

- At any time during the remainder of the day. 86–1, Mar. 25, 1959, p 5264; 87–2, Sept. 12, 1962, p 19258.
- On the following day. 86–1, May 26, 1959, p 9155.
- During the remainder of the week. 90–1, Dec. 15, 1967, p 37126.
- At any time on certain days of the week. 88–2, Apr. 7, 1964, p 7119; 91–2, Dec. 21, 1970, p 43094.
- At any time on the legislative day of Friday and Saturday, and if necessary on Sunday. 97–1, Nov. 19, 1981, p 28211.
- At any time during the remainder of the session. 86–1, Sept. 11, 1959, p 19128; 87–1, Sept. 16, 1961, p 19800.

Motions to Authorize a Recess

In 1991 the House amended Rule XVI clause 4 to permit the Speaker to entertain ''at any time'' a motion authorizing him to declare a recess. This motion differs from authorizations pursuant to unanimous-consent requests in that the motion is privileged and may be adopted by simple majority vote. The motion differs from special-order authorizations in that the latter require adoption of a resolution reported by the Committee on Rules. Generally, see SPECIAL RULES.

Rule XVI gives the motion for a recess a privileged status equal to that of the motion to adjourn. *Manual* § 782. As is noted elsewhere, the motion to adjourn is ordinarily a motion of the highest precedence and privilege (*Manual* § 783). See ADJOURNMENT.

A privileged motion to recess was permitted by rule from 1880 to 1890. 8 Cannon § 3356. With this exception, until the adoption of the 1991 rule, the motion to authorize a recess was not privileged in the House (8 Cannon § 3354) and could be entertained only by unanimous consent. See 86–2, Mar. 23, 1960, p 6400; 94–1, July 31, 1975, p 26244.

A motion to authorize the Speaker to declare a recess is not debatable (*Manual* § 782), but is subject to amendment.

Quorum Requirements

A vote by the House to authorize the Speaker to declare a recess requires a quorum. 4 Hinds §§ 2955–2960. A request for a recess cannot be entertained if the absence of a quorum has been declared. 4 Hinds § 2959.

But when the hour previously fixed for a recess arrives, the Chair declares the House in recess even if a quorum is not present. 5 Hinds §§ 6665, 6666.

§ 3. Duration of Recess

The Speaker is permitted by Rule I clause 12 to declare a recess for ''a short time . . . subject to the call of the Chair,'' when no question is pending before the House. In 1993 the House stood in recess for more than seven hours (103–1, Apr. 1, 1993, p ____), and in 1994, the House stood in recess for 10 hours (103–2, Mar. 18, 1994, p ____).

The Speaker may be authorized by the House to declare a recess to extend not later than a time certain on that day (92–2, Oct. 14, 1972, p 36474), or to declare a recess until a time certain on the following calendar day (97–1, Nov. 20, 1981, p 28628). Overnight recess may be authorized, in which event the same legislative day is retained. See 98–1, Nov. 10, 1983, p 32200. A recess does not terminate a legislative day and a legislative day may not be terminated during recess. 8 Cannon § 3356. Upon the expiration of an overnight recess, the House is called to order and the Chaplain offers the prayer. 97–1, Nov. 20, 1981, p 28628.

The Speaker has been authorized to declare recesses at any time during a Thursday-evening-to-Monday-noon period subject to the call of the Chair. 98–1, Nov. 10, 1983, p 32197. However a recess cannot extend longer than three days by House order alone, since neither House may adjourn for more than three days without the consent of the other. See ADJOURNMENT. Such adjournments are provided for by concurrent resolution whereas adjournments of three days or less may be agreed to by simple resolution or other House order. See 94–1, Feb. 6, 1975, pp 2641, 2642.

§ 4. Purpose of Recess

Where the Speaker is given authority to declare a recess by unanimous consent or a special order, the specific purpose of the recess may be stipulated. The Speaker may be authorized to declare the House in recess in order to:

- Attend to a Member who has suddenly taken ill on the floor of the House. 91–1, July 8, 1969, p 18614.
- Await the receipt of a message from the President. 91–1, Jan. 17, 1969, pp 1188–92.
- Await a message from the Senate. 91–1, Feb. 7, 1969, p 3268.
- Await a report from a committee on certain emergency legislation. 91–2, Mar. 4, 1970, pp 5867 *et seq.*
- Await a conference report. 91–2, Dec. 9, 1970, p 40794; 92–1, Dec. 14, 1971, pp 46884–88.

- Await a report from the Committee on Rules. 91–2, Mar. 4, 1970, p 5867.
- Await Senate action on a House joint resolution continuing appropriations for several departments of the government which are without funds. 95–1, Nov. 4, 1977, p 37066.
- Await or attend a joint meeting to receive certain dignitaries. 92–1, Sept. 8, 1971, p 30845.
- Receive former Members of the House in the Chamber. 92–1, Mar. 4, 1971, pp 5137–41; 94–1, May 12, 1975, p 13738; 95–2, May 19, 1978, p 14660.
- Permit the Members to attend certain ceremonies. 93–2, Dec. 19, 1974, p 41604.
- Make preparations for a secret session of the House pursuant to Rule XXIX. 96–1, June 20, 1979, p 15711.

Where the Speaker is given authority to declare recesses, and the specific purpose of such recesses is not made a part of the request, the authority may be exercised at the Speaker's discretion. 88–2, Apr. 8, 1964, p 7304.

Recognition

A. Introductory; Power of Recognition

B. Right to Recognition; Priorities

C. Recognition on Particular Questions

Research References

2 Hinds §§ 1419–1479; 5 Hinds §§ 4978–5079
6 Cannon §§ 283–313; 8 Cannon §§ 2448–2478
Manual §§ 354–357, 753–759, 764, 782, 807, 827, 906, 908

A. Introductory; Power of Recognition

§ 1. In General; Seeking Recognition

In order to address the House or speak on any matter, or to make a motion or objection, a Member must first secure recognition from the

Speaker in the House or from the Chairman of the Committee of the Whole. See Rule XIV clause 1. *Manual* § 749. Under the rule, the Chair has the power and discretion to determine who will be recognized, and for what purpose. 2 Hinds §§ 1422–1424. Generally, see § 2, infra. To determine a Member's claim to the floor, the Chair may ask for what purpose a Member rises, and grant recognition only for the specific purpose indicated. 78–2, Jan. 26, 1944, p 746; 89–1, July 2, 1965, p 18631.

Duty to Rise and Remain Standing

Members must seek recognition at the proper time in order to protect their rights under the rules to make points of order or to offer amendments. 91–2, Apr. 14, 1970, p 11649. A Member must be on his feet and must address the Chair in order to be recognized (93–2, Dec. 17, 1974, p 40509; 98–1, Oct. 26, 1983, p 29430) and may not remain seated at the committee table while engaging in debate. 94–2, June 28, 1976, p 21021. A Member controlling the floor in debate must remain standing (although a Member who inadvertently seats himself and then immediately stands again before the Chair recognizes another Member may be permitted to retain control of the floor). 95–1, Oct. 19, 1977, p 34220. A Member who resumes his seat after being called to order loses his claim to prior right of recognition. 5 Hinds § 5016.

The mere placing of an amendment on the Clerk's desk does not bestow recognition. 88–2, Feb. 6, 1964, p 2290. Where numerous amendments that might be offered to a bill have been left with the Clerk, the Chair may remind all Members seeking to offer amendments not only to stand but to seek recognition at the appropriate time. 95–2, Aug. 3, 1978, p 24227. A Member recognized in support of an amendment may yield to another for a question or a brief statement, but he must remain standing in order to protect his right to the floor. 88–2, Mar. 12, 1964, p 5100.

Forms

The language used to obtain the floor and in granting recognition to Members follows a traditional format of long-standing:

MEMBER: Mr. Speaker (or Mr. Chairman). . . .

Note: This form of address is used whether the Member is seeking recognition to offer a proposition or interrupt a Member having the floor. 5 Hinds § 4979; 6 Cannon §§ 193, 284. Such salutations as ''Gentlemen of the House'' or ''Ladies and gentlemen'' are not in order. 6 Cannon § 285. Where a woman is presiding, the term ''Madam Speaker'' or ''Madam Chairman'' is used. 6 Cannon § 284.

THE SPEAKER (or CHAIRMAN): For what purpose does the gentleman (or gentlewoman) rise?

Note: This question enables the Chair to determine whether the Member proposes a matter that may be entitled to precedence or is otherwise in order under the rules of the House. 6 Cannon §§ 289–291. 100–2, Feb. 17, 1988, p 1584.

MEMBER: I propose to offer a motion to _____ (*or raise other stated business*).

THE SPEAKER (OR CHAIRMAN): The Chair recognizes the gentleman from _____ (*Member's home state*).

Recognition to Interrupt a Member

A Member who wishes to interrupt another who has the floor must first obtain recognition from the Chair. 84–2, June 29, 1956, p 11455; 87–1, June 7, 1961, p 9681. However, it is entirely within the discretion of the Member occupying the floor to determine when and by whom he shall be interrupted. *Manual* § 364. The interrupting Member is not entitled to the floor until recognized by the Chair even though he may have been yielded time by the Member in charge of the time. 71–3, Feb. 28, 1931, pp 6575–77.

Cross References

Recognition is governed in specific instances and in specific parliamentary situations by practices covered fully elsewhere in this work. See, for example, AMENDMENTS; PREVIOUS QUESTION; REFER AND RECOMMIT; RECONSIDERATION.

§ 2. Power and Discretion of Chair

In Jefferson's time, the Speaker was required by House rule to recognize the Member who was ''first up.'' 2 Hinds § 1420. In case of doubt there was an appeal from his recognition of a particular Member. 2 Hinds §§ 1429–1434. This practice was changed beginning in 1879, when the House adopted a report asserting that ''discretion must be lodged with the Presiding Officer.'' The report alluded to the practice of listing those Members desiring to speak on a given proposition, but indicated that the Chair should not be obligated to follow the order stipulated but should be free to exercise ''a wise and just discretion in the interest of full and fair debate.'' 2 Hinds § 1424. Today, the rules of the House give the Chair the power and discretion to decide who shall be recognized (88–2, Apr. 8, 1964, p 7302); and his decision is no longer subject to appeal. 8 Cannon §§ 2429, 2646; 103–1, July 23, 1993, p ____; *Manual* § 753. (There has been no appeal from a decision of the Speaker on a question of recognition since 1881. *Manual* § 356.)

Of course, the recognition of particular Members is often governed by House rules and precedents pertaining to the order of business or by special rules from the Committee on Rules. See § 3, infra. But where matters of equal privilege are pending, the order of their consideration is subject to the Speaker's discretionary power of recognition. 89–2, Sept. 22, 1966, p 23691. It follows that when more than one Member seeks recognition to call up privileged business it is within the discretion of the Speaker as to whom he shall recognize. Rule XIV clause 2. 87–2, Aug. 27, 1962, pp 17654, 17670.

Rule XXV, which provides that questions relating to the priority of business are to be decided by a majority without debate (*Manual* § 900), may not be invoked to inhibit the Speaker's power of recognition. 94–1, July 31, 1975, p 26249.

§ 3. Limitations; Basis for Denial

The Speaker's power of recognition is subject to any limitations imposed by the House rules (91–2, July 29, 1970, p 26419), such as the rule prohibiting the Chair from recognizing a Member to draw attention to gallery occupants (Rule XIV clause 8, *Manual* § 764). 83–2, July 27, 1954, p 12253. The Chair's power of recognition is also governed by established practice and precedent, such as the long-standing tradition that a member of the committee reporting a bill is first recognized for motions to dispose of the bill. See § 11, infra.

§ 4. Alternation in Recognition

In the House

Traditionally but, under modern practice, not necessarily, the Chair in recognizing for general debate in the House alternates between those favoring and those opposed, preferring members of the committee reporting the bill. 2 Hinds §§ 1439–1443. Under the standing rules of the House, the Member reporting or calling up a measure is entitled to recognition for one hour, during which time he may yield to others as he may choose; at the close of that hour, unless the previous question is moved, the ranking Member in opposition may be recognized for an hour with the same privilege of yielding. Thereafter, until the previous question is invoked, other Members favoring and opposing the measure are recognized, alternately, preference again being given to members of the committee reporting the measure. 8 Cannon § 2460.

In alternating, the Chair recognizes Members on either side of the question, and not necessarily between members of the majority and minority par-

ties of the House. 80–1, July 18, 1947, pp 9311 *et seq.* Absent a special rule making party affiliation pertinent, the Chair alternates according to differences on the pending question rather than on account of political affiliations. 2 Hinds § 1444. A special order providing for a division of time for debate between those ''for and against'' a proposition does not necessarily require a division between the majority and minority parties of the House but rather between those actually favoring and opposing the measure. 7 Cannon § 766. Under a special rule providing for equal division of time for debate between those favoring and those opposing a bill, without designating who should control the time, it is within the discretion of the Chair to recognize a Member supporting and a Member opposing the measure. 7 Cannon § 785. But where the rule allots control of time to ''the chairman and the ranking minority member of the committee'' the term ''minority'' is construed to refer to the minority party in the House and not to those in the minority on the pending question. 7 Cannon § 767.

In Committee of the Whole

A similar alternation procedure is followed during general debate in the Committee of the Whole. The usual practice is for the Chair, pursuant to special rule from the Committee on Rules or by unanimous consent, to alternate between those controlling time, usually the Chairman and ranking minority member. *cf.* 7 Cannon § 875.

It is the usual practice in the Committee of the Whole, during debate under the five-minute rule, to alternate between majority and minority members, giving priority to members of the reporting committee. 92–1, Sept. 30, 1971, p 34287; 94–2, June 11, 1976, p 17764. Where Members have amendments to offer during such debate, the Chair alternates recognition between majority and minority members, with members of the committee reporting the pending bill being entitled to prior recognition over noncommittee members. 98–1, May 4, 1983, p 11068. The principal of alternation is applicable in theory even to pro forma amendments, where Members merely move to strike the last word. Where the Chair has no knowledge as to whether specific Members oppose or support the pending proposition, the Chair cannot strictly alternate between both sides of the question. 98–2, June 7, 1984, p 15423. Where an amendment is offered, a strict reading of the ''five-minute rule'' [Rule XXIII clause 5(a)], requires the five minutes allotted the proponent to be followed by recognition of a Member in opposition to the amendment.

B. Right to Recognition; Priorities

§ 5. In General

As a general proposition it may be stated that the Speaker or Chairman has the discretion to determine the order or sequence in which Members will be recognized in debate. 90–1, July 19, 1967, p 19416. Indeed, the rules specifically authorize the Speaker to ''name the Member who is first to speak'' when two or more Members rise at once. Rule XIV clause 2. *Manual* § 753. It should be emphasized however that the Chair's determination of priorities is governed by many factors—such as whether the pending proposition has been reported by a committee or has been called up directly by a Member or whether the motion or measure is given priority or is privileged under the rules. Priorities in debate may also vary depending on whether the matter is being considered in general debate or under the five-minute rule. Whether the pending matter is an amendment or a motion must also be taken into account. In recognizing Members to move to recommit, for example, the Speaker gives preference to minority members of the committee reporting the bill who are opposed to the bill. 86–1, June 19, 1959, p 11372. Generally, see REFER AND RECOMMIT.

§ 6. Priorities of Committee Members

Priority of Committee Members Over Nonmembers

Absent a special rule providing to the contrary, the members of the committee reporting a bill are entitled to prior recognition over nonmembers for debate on the bill. 2 Hinds §§ 1438, 1448; 6 Cannon §§ 306, 307; 77–1, Feb. 10, 1941, p 875; *Manual* § 756. Members of the committee reporting a bill also have priority of recognition to make points of order against proposed amendments to the bill. 81–1, Mar. 30, 1949, p 3520. Priority of recognition under the five-minute rule, see § 14, infra.

The practice of according priority to committee members is an ancient one, having been adapted from that of the English Parliament. It is reasoned that the members of the reporting committee—having worked for months if not years on the legislation—are naturally more familiar with its strengths and weaknesses. 77–1, Mar. 6, 1941, pp 1921, 1922. They are entitled to prior recognition even over the Member who introduced the bill and who is its author. 75–1, July 8, 1937, p 6946. If on the other hand the proposition has been brought directly before the House independently of a committee, the proponent is entitled to prior recognition for motions and debate. § 10, infra.

Priorities as Between Committee Members

Recognition is extended to committee members on the basis of their committee seniority (75–1, Apr. 14, 1937, p 3456), with the chair alternating between members of the majority and the minority (§ 4, supra). Where opposition is relevant to recognition, if no committee member rises in opposition to the measure, then any Member may be recognized in opposition. 2 Hinds § 1445; 7 Cannon § 958.

Recognition of Committee Chairmen

The chairman of the reporting committee usually has charge of the bill and is entitled at all stages to prior recognition for allowable motions intended to expedite it. § 11, infra. If the chairman is opposed to the bill, however, he ordinarily yields prior recognition to a member of his committee who has favored the bill. 2 Hinds § 1449.

Effect of Failure to Seek Recognition

Although members of the committee reporting a bill under consideration usually have preference of recognition, a member may lose such preference if he does not seek recognition in a timely manner. 90–1, Aug. 8, 1967, p 21842. The Chair may recognize another on the basis that the committee member, though standing, is not actively seeking recognition. 95–2, Aug. 4, 1978, p 24439.

§ 7. Right of Member in Control

Where a Member has been placed in charge of a bill by the reporting committee, or has been so designated by a special rule from the Committee on Rules, the Member named as manager is recognized to call up the measure. 75–1, Feb. 24, 1937, p 1562; 76–3, June 6, 1940, p 7706. Preference in recognition is accorded by the Chair to the manager over other Members. 79–1, Sept. 11, 1945, p 8510. This priority in recognition of the Member in charge over other Members prevails in both the House (79–1, Sept. 11, 1945, p 8510) and in the Committee of the Whole (75–1, July 8, 1937, p 6946).

The Member in charge of the bill is also entitled at all stages to prior recognition for allowable motions intended to expedite the bill (2 Hinds § 1457; 6 Cannon § 300), from the time of its first consideration (2 Hinds § 1451) to the time of consideration of Senate amendments (2 Hinds § 1452) and conference reports (6 Cannon § 301). The Member who has been recognized to call up a measure in the House has priority of recognition to move the previous question thereon even over the chairman of the committee reporting that measure. 99–2, Oct. 1, 1986, pp 27466–68.

The fact that a Member has the floor on one matter does not necessarily entitle him to prior recognition on a motion relating to another matter. 2 Hinds § 1464. Before the Member in charge has begun his remarks, a Member proposing a preferential motion is entitled prior recognition. 5 Hinds §§ 5391–5395. However, once debate has begun, a Member may not by offering a debatable motion of higher privilege than the pending motion deprive the Member in charge of the floor. 2 Hinds §§ 1460–1463; 6 Cannon §§ 297, 298; 8 Cannon §§ 2454, 3183, 3193, 3197, 3259.

§ 8. Right to Open and Close General Debate

Generally

The House rules provide that the Member reporting a measure from a committee is entitled to open and close general debate on that measure. Rule XIV clause 3. *Manual* § 759. And although a House rule precludes a Member from speaking twice on the same question, that rule makes an exception for the ''mover, proposer, or introducer'' of the pending matter; that Member is permitted to speak in reply after other Members choosing to speak have spoken. Rule XIV clause 6. *Manual* § 762. Where a special order or a unanimous-consent request places the control of debate in a ''manager,'' or divides the time between the Chairman and ranking minority member of the committee reporting the measure, those controlling the time may yield to other Members as often as they desire, and are not restricted by this rule. The minority member controlling one-half of the time must consume it or yield it back prior to the closing of debate. 94–2, Mar. 2, 1976, p 4979; 99–2, May 13, 1986, p 10503.

The manager of a bill for purposes of closing general debate may be the chairman of the reporting committee or a designated majority member of that committee. 99–1, Mar. 26, 1985, p 6283.

The right of the manager to open and close general debate under Rule XIV clause 3 is recognized in both the House and the Committee of the Whole. 99–1, Mar. 26, 1985, p 6283. In the House, the right to close is lost if the previous question is ordered. 5 Hinds § 4997.

Rights of Proponents

The manager of a bill in control of the time, and not its proponent, is ordinarily entitled to close general debate. 99–1, Mar. 26, 1985, p 6283. But where existing law provides that general debate in the Committee of the Whole on a joint resolution shall be equally divided and controlled by proponents and opponents, a proponent has the right to open and close general debate. 99–1, Apr. 23, 1985, p 8964. Where a joint resolution having no

''sponsor'' and which had not been referred to a committee was made in order by a special rule, its proponent was recognized to open and close general debate, there being no ''manager'' of the pending resolution. 99–2, Apr. 16, 1986, pp 7611, 7629.

§ 9. — To Close Debate on Amendments

Recognition of Manager of Bill

In the Committee of the Whole, the Member managing the bill is entitled to prior recognition to move to close debate on a pending amendment over other Members who desire to debate the amendment or to offer amendments thereto. 91–2, Nov. 25, 1970, p 38990. The manager is recognized for that purpose whether debate is proceeding under the five-minute rule or where debate has been limited and divided between the proponent of the amendment and a Member opposed thereto, and the manager is the opponent representing the committee position. 98–2, Apr. 4, 1984, p 7841.

Ordinarily the manager of a bill, including the minority manager or other representative of the reporting committee's position, and not the proponent of an amendment has the right to close debate on an amendment on which debate has been limited and allocated under the five-minute rule in the Committee of the Whole. *Manual* § 762. This principle prevails even where the manager of the bill is the proponent of a pending amendment to the amendment. 98–1, Mar. 16, 1983, p 5792. Where the pending text includes a provision recommended by a committee of sequential referral, a member of that committee is entitled to close debate against an amendment thereto. *Manual* § 762. Where debate time has been allocated among several members of the reporting committee, the senior majority member may be recognized to close debate on amendments opposed by the committee. 99–2, Aug. 11, 1986, p 20709.

To avoid the sometimes difficult task of identifying committee positions on pending amendments, the Chair devised the following principle: By recommending an amendment in the nature of a substitute, a reporting committee implicitly opposes a further amendment that could have been included therein, so that a committee representative who controls time in opposition may close debate thereon. *Manual* § 762.

Effect of Special Rule

Where a special rule limits debate on designated amendments and allocates time between the proponent and an opponent, the manager of the bill will be recognized to control debate in opposition to the amendment if he qualifies as opposed. 97–2, Dec. 1, 1982, p 28235. In such instances, the

manager of the bill recognized to control the time on behalf of the committee in opposition to the amendment has the right to close the debate on the amendment. 97–1, June 18, 1981, p 12977; 98–2, June 29, 1984, pp 20250, 20253. Where debate time has been allocated among several Members from the reporting committee, the senior majority manager may be recognized to close debate on amendments opposed by the committee. 99–2, Aug. 11, 1986, p 20709.

Where the manager of the bill is also the proponent of an amendment thereto, his right to close limited debate may not exist where the amendment was made in order as a nongermane amendment by a special rule, in which case an opponent representing the reporting committee's position may close. 104–2, May 22, 1996, p ____.

Recognition of Proponent of Amendment

While the manager of a bill, and not the proponent of an amendment thereto, normally has the right to close debate on the amendment, the proponent of an amendment has the right to close debate thereon where:

- The amendment represents the reporting committee position, and is not opposed by the manager of the bill. 99–2, Aug. 14, 1986, p 21718.
- The Member controlling time in opposition does not represent the position of a reporting committee. 102–2, June 4, 1992, p ____.
- The committee manager does not oppose the amendment and where the committee has taken no position on the amendment. 99–2, Aug. 15, 1986, pp 22056, 22057.
- An unreported bill is being considered pursuant to a special order dividing the time for debate on an amendment between a proponent and an opponent, there being no committee manager. 99–1, Apr. 24, 1985, pp 9206, 9228 *et seq.* See also *Manual* § 762.
- Where no representative from the reporting committee opposes an amendment to a multi-jurisdictional bill. *Manual* § 762.

C. Recognition on Particular Questions

§ 10. In General; As to Bills

Under a practice of long-standing, when a bill is called up in the House control of debate is given by special rule from the Committee on Rules to the chairman and ranking minority member of the reporting committee(s), and recognition is extended accordingly. 89–2, Sept. 25, 1966, p 23762. In the absence of the chairman and ranking minority member designated by the rule, the Chair recognizes the next ranking majority and minority members for control of such debate. 77–2, July 23, 1942, pp 6542–46. If on the other

hand the proposition has been brought directly before the House independently of a committee, the proponent is entitled to prior recognition for motions and debate. 2 Hinds §§ 1446, 1454; 8 Cannon § 2454.

Recognition to offer amendments, see AMENDMENTS. Recognition for parliamentary inquiries and points of order, see POINTS OF ORDER; PARLIAMENTARY INQUIRIES.

Discharged Bills

If a bill has not been reported from committee but is before the House pursuant to a motion to discharge, the proponents of that motion are entitled to prior recognition for the purpose of managing the bill. 72–1, June 14, 1932, p 12911; 91–2, Aug. 10, 1970, p 28004. Recognition of Members for debate on the motion, see Rule XXVII clause 4 (*Manual* § 908). See also DISCHARGING MEASURES FROM COMMITTEES. In recognizing a Member to control time for debate in opposition to a discharged bill, the Chair recognizes the chairman of the committee having jurisdiction of the subject matter if he is opposed. 81–2, Aug. 14, 1950, p 12543.

Bills Called Up by Unanimous Consent

Where a bill is called up in the House by a Member pursuant to a unanimous-consent agreement, the Member calling up the bill is recognized for one hour, and amendments may not be offered by other Members unless he yields for that purpose or unless the previous question is rejected. 87–2, Oct. 5, 1962, pp 22606–09.

§ 11. For Motions

As noted earlier, the Member in charge of a bill is entitled at all stages to prior recognition for allowable motions intended to expedite the bill. § 7, supra. The proponent of a motion is also subject to a determination by the Chair that recognition is to be extended to another Member with a motion of higher privilege. Thus, where one Member moves a call of the House, and another Member immediately moves to adjourn, the Chair will recognize the latter, the motion to adjourn being of higher privilege. See, for example, 88–1, June 12, 1963, p 10739. The Member with the preferential motion must offer it before the other Member has begun debate, if the motion is debatable, since a Member may not, by attempting to offer a preferential motion, deprive another Member—who has begun his remarks—of the floor. 8 Cannon § 3197.

A Member may lose his right to the floor if he neglects to claim it before another Member with a motion has been recognized. 2 Hinds § 1435. A Member desiring to offer a motion must actively seek recognition from

the Chair before another motion to dispose of the pending question has been adopted, and the fact that he may have been standing at that time is not sufficient to confer recognition. 97–1, Nov. 22, 1981, p 28751. However, the mere making of a motion does not confer recognition, and where another Member has shown due diligence he may be recognized even though a motion has been made. 78–1, Apr. 16, 1943, p 3502.

For treatment of recognition to offer particular kinds of motions, see PREVIOUS QUESTION, SUSPENSION OF RULES, and other articles dealing with specific motions.

§ 12. Of Opposition After Rejection of Motion

Generally

Where an essential motion made by the Member in charge of a measure is defeated, the right to prior recognition passes to a Member opposed as determined by the Speaker. 2 Hinds §§ 1465–1468. 93–2, Oct. 7, 1974, pp 34151, 34157–59; *Manual* § 755. Thus, where the previous question is rejected on a pending resolution, the Chair recognizes a Member opposed to the resolution who may then offer an amendment. 6 Cannon § 308; 91–2, June 16, 1970, pp 19837–44. And the recognition of that Member is not precluded by the fact that he has been previously recognized and had offered an amendment which was ruled out on a point of order. 91–1, Jan. 3, 1969, pp 27–29.

The rule that the defeat of an essential motion offered by the Member in charge causes recognition to pass to the opposition is applicable when:

- House disagrees to a motion to lay an adversely reported resolution of inquiry on the table. 82–2, Feb. 20, 1952, pp 1205–07.
- House disagrees to the previous question on a resolution reported from the Committee on Rules. 89–2, Oct. 19, 1966, p 27225.
- House disagrees to the previous question on a resolution relating to the seating of a Member-elect. 90–1, Jan. 10, 1967, p 14.
- House disagrees to the previous question on a resolution to discipline a Member of the House. 6 Cannon § 236.
- House disagrees to the previous question on a resolution providing for adoption of rules. 6 Cannon § 308.
- House rejects a motion to concur in a Senate amendment with an amendment. 88–1, May 14, 1963, pp 8508–11. (Recognition passes to opposition for disposition of that Senate amendment only.)
- Committee of Whole reports a bill adversely. 4 Hinds § 4897; 8 Cannon § 2430.
- Committee of the Whole reports a bill with the recommendation that the enacting clause be stricken out. 8 Cannon § 2629.

The rule that recognition passes to Member of the opposition is applicable upon defeat of an *essential* motion by the Member in charge of the bill. A motion to postpone consideration to a day certain is not an essential motion whose defeat requires recognition to pass to a Member opposed. 72–1, June 2, 1930, p 3548. And the mere defeat of an amendment proposed by the Member in charge does not cause the right to prior recognition to pass to the opponents. 2 Hinds § 1478. Moreover, the recognition for a motion by a Member in opposition may be preempted by a motion of higher precedence. 97–2, Aug. 13, 1982, pp 20969, 20975–78; *Manual* § 755.

Effect of Rejection of Conference Report

The right to prior recognition ordinarily passes to a Member of the opposition when the House refuses to order the previous question on a conference report and then rejects the report, since control passes to the opposition upon rejection of the motion for the previous question. 2 Hinds §§ 1473–1475; 5 Hinds § 6396. But the invalidation of a conference report on a point of order, while equivalent to its rejection by the House, does not give the Member raising the question of order the right to the floor (8 Cannon § 3284) and exerts no effect on the right to recognition (6 Cannon § 313). Rejection of a conference report after the previous question has been ordered thereon does not cause recognition to pass to a Member opposed to the report, and the manager retains control to offer the initial motion to dispose of amendments in disagreement. 2 Hinds § 1477; 94–1, May 1, 1975, p 12761.

§ 13. As to Special Rules

Calling Up Special Rules

Recognition to call up special rules—that is, order-of-business resolutions from the Committee on Rules—may be sought pursuant to the provisions of Rule XI clause 4(c). *Manual* § 730. Ordinarily, only a member of the Committee on Rules designated to call up a special rule from the committee may be recognized for that purpose. 76–3, June 6, 1940, p 7706. But where a special rule has been reported by the committee and has not been called up within the seven legislative days specified by clause 4(c), recognition to call it up may be extended to any member of that committee (96–1, Oct. 24, 1979, p 29395), including a minority member (96–1, Nov. 13, 1979, p 32185; 96–2, Sept. 25, 1980, pp 27417–24). The Member calling up the resolution must have announced his intention one calendar day before seeking recognition. See *Manual* § 730. And since the motion to call up such a resolution is privileged, the Speaker would be obliged to recognize

for this purpose unless another matter of privilege was also proposed, in which case the order of consideration would be determined pursuant to the Speaker's discretionary power to grant recognition. 89–2, Sept. 22, 1966, p 23691.

Recognition for Debate

A Member recognized to call up a special rule or resolution by direction of the Committee on Rules controls one hour of debate thereon and may offer one or more amendments thereto. 95–1, July 29, 1977, p 25653. He need not have the specific authorization of the committee to offer an amendment. 101–2, Sept. 25, 1990, p ____. He is recognized for a full hour notwithstanding the fact that he has previously called up the resolution and temporarily withdrawn it after debate. 88–2, Apr. 8, 1964, pp 7303–08. Other Members may be recognized only if yielded time. 90–2, Oct. 8, 1968, pp 30217, 30222–24. The resolution is not subject to amendment from the floor by another Member unless the Member in charge yields for that purpose or unless the House rejects the previous question. 94–2, Feb. 26, 1976, pp 4625, 4626.

Where the resolution is called up with reported technical amendments, the amendments are sometimes reported and acted on before the Member reporting the resolution is recognized for debate thereon. 88–2, Aug. 19, 1964, pp 20213, 20221. But ordinarily the manager's amendments are voted on after debate and after the previous question is ordered on the amendments and on the resolution. 101–2, Sept. 25, 1990, p ____.

In the event that the previous question is rejected on the resolution, it is subject to amendment, further debate, or a motion to table or refer, and the Member who led the opposition to the previous question has the prior right to recognition (89–2, Oct. 19, 1966, pp 27713, 27725–29; 96–2, May 29, 1980, pp 12667–78), subject to being preempted by a preferential motion offered by another Member (97–2, Aug. 13, 1982, pp 20969, 20975–78).

§ 14. Under the Five-minute Rule

Generally; Effect of Special Rule

Recognition of Members to offer amendments in the Committee of the Whole under the five-minute rule is within the Chair's discretion and cannot be challenged on a point of order. 94–2, June 11, 1976, p 17764. The Chair does not anticipate the order in which amendments may be offered nor does he declare in advance the order in which he will recognize Members proposing amendments. 89–2, Sept. 8, 1966, p 22020. Of course, if a special rule reported from the Committee on Rules specifies those Members who are to

control debate, the Chair will extend recognition accordingly. But where the special rule merely *makes in order* the consideration of a particular amendment, it does not confer a privileged status on the amendment and does not, absent legislative history establishing a contrary intent by that committee, alter the principle that recognition to offer an amendment under the five-minute rule is within the discretion of the Chairman of the Committee of the Whole. 95–2, May 23, 1978, p 15095. As to the effect of special rules on the control and distribution of debate time, see CONSIDERATION AND DEBATE.

Priority of Committee Members over Noncommittee Members

In extending recognition for debate under the five-minute rule the Chair follows certain guidelines as a matter of long-standing custom. Among them is that recognition to debate an amendment under the five-minute rule is first accorded to members of the committee reporting the bill over Members of the House who are not on that committee. 92–1, Sept. 30, 1971, p 34287; 94–2, June 11, 1976, p 17764. Committee amendments to a section are considered before the Chair entertains amendments from the floor. 88–1, June 24, 1963, p 11396. Thus, the Chair will normally recognize a member of a committee reporting a bill to offer a substitute for an amendment before recognizing a noncommittee member, although that committee member may already have been separately recognized to debate the original amendment. 96–1, Oct. 18, 1979, p 28770. Members of the committee reporting a pending bill are entitled to prior recognition over noncommittee members without regard to their party affiliation. Thus the Chair may accord prior recognition to minority members of the reporting committee to offer amendments over majority noncommittee members. 93–2, July 22, 1974, pp 24454, 24457.

Priorities as Between Committee Members

In bestowing recognition under the five-minute rule, the Chair gives preference to the chairman of the committee reporting the bill under consideration. 90–1, Nov. 15, 1967, p 32655. Thereafter, the Chair endeavors to alternate between majority party and minority party members of the reporting committee. 92–1, Sept. 30, 1971, p 34287; 94–2, June 11, 1976, p 17764. Priority of recognition to offer amendments is extended to members of the full committee reporting the bill, alternating between the majority and minority, and the Chair does not accord prior recognition to members of the subcommittee which considered the bill over other members of the full committee. 96–2, July 2, 1980, p 18292. But in five-minute debate on appropriation bills the Chair may under some circumstances recognize members of

the subcommittee handling the bill first, and then recognize members of the full Appropriations Committee. 91–1, July 30, 1969, p 21420.

In recognizing Members to offer amendments under the five-minute rule, the Chair normally recognizes members of the committee handling the bill in the order of their seniority on the committee. 81–1, July 21, 1949, p 9936; 91–2, July 23, 1970, p 25635; 95–2, May 17, 1978, p 14145. But recognition under the five-minute rule remains within the discretion of the Chair, and on rare occasions he has recognized a junior member of the committee reporting the bill. 91–1, Oct. 2, 1969, p 28101.

§ 15. — Under Limited Five-minute Debate

The House, by unanimous consent, may agree to limit or extend debate under the five-minute rule in the Committee of the Whole, whether or not that debate has commenced. In the Committee of the Whole, debate under the five-minute rule may be limited by the Committee by unanimous consent or, after preliminary debate, by motion. See CONSIDERATION AND DEBATE. When such a limitation has been agreed to, the general rules of recognition applied under the five-minute rule are considered abrogated. 91–1, Sept. 16, 1969, p 25633. Decisions regarding recognition during the remaining debate time, a division not having been ordered as part of the limitation, are largely within the discretion of the Chair. 91–2, May 6, 1970, p 14467; 94–1, June 19, 1975, pp 19785–87; 95–1, June 14, 1977, p 18833. He may, in his discretion, either (1) permit continued debate under the five-minute rule, (2) allocate the remaining time among those desiring to speak, or (3) divide the time between a proponent and an opponent to be yielded by them. 97–2, May 25, 1982, p 11672. The order in which the Chair recognizes Members desiring to speak is also subject to his discretion; and he may take into account such factors as their committee status, whether they have amendments at the desk, and their seniority. 89–2, Oct. 14, 1966, p 26976. In exercising these discretionary powers the Chair may:

- Announce that he will attempt to divide the time equally among those Members standing at the time the limitation is imposed and then, if time remains, recognize other Members seeking recognition. 89–2, Aug. 1, 1966, p 17759; 90–1, May 24, 1967, p 13824.
- Divide the time equally among all those Members who were on their feet seeking recognition (89–1, Mar. 26, 1965, p 6113), whether or not they have previously spoken to the question (90–1, May 24, 1967, p 13824).
- Recognize Members wishing to offer amendments and those opposed to the amendments. 91–2, May 6, 1970, p 14465.
- Divide the time between the majority and minority managers of the bill. 94–2, Apr. 1, 1976, p 9088.

- Allocate time on an amendment between the proponent and an opponent thereof, to be yielded by them. 97–2, Aug. 5, 1982, p 19758.
- Recognize first those Members wishing to offer amendments after having equally divided the time among all Members desiring to speak. 97–1, Nov. 18, 1981, p 28074.
- Recognize during remaining free time those Members who have a desire to speak, and then Members who have not spoken to the amendment or Members who were recognized for less than five minutes under the limitation of time. 86–2, Mar. 17, 1960, pp 5911, 5914.
- Allot the remaining time in three equal parts—to the offeror of an amendment, to the offeror of an amendment to the amendment, and to the floor manager of the bill. 98–1, Apr. 13, 1983, pp 8425, 8426.
- Reallocate remaining free time among other Members who have not spoken or proceed again under the five-minute rule. 95–1, Aug. 4, 1977, p 27021.

Length of Time Remaining as Factor

When the period of time fixed for debate under a limitation is relatively short, the Chair in his discretion may take note of all those Members seeking recognition and apportion the remaining time among them, though each may have less than five minutes to speak, or he may divide the time between a proponent and an opponent. But where the time remaining for debate is fixed at a longer period, such as an hour and a half, the Chair may decline to apportion the time (81–2, Feb. 22, 1950, p 2240), and elect to continue to recognize Members under the five-minute rule. Thus where the limitation agreed to is several hours in advance of the expiration of time, the Chair may in his discretion continue to recognize Members under the five-minute rule, rather than allocate the remaining time among all Members desiring to speak or between two Members, subject to any subsequent limitations on time ordered on separate amendments when offered. 97–2, July 29, 1982, p 18569. (See 98–1, July 26, 1983, pp 20943, 20944, where the remaining time was too lengthy to allocate among all Members then present or to divide between two Members.) In such cases, the Chair may in his discretion continue to proceed under the five-minute rule until he desires to allocate the remaining time on possible amendments, and may then divide that time between proponents and committee opponents of amendments before they are offered. 97–1, July 16, 1981, p 16044. Or he may subsequently choose to divide any remaining debate time among those Members standing and reserve some time for the committee to conclude debate. 98–1, Nov. 2, 1983, p 30512.

§ 16. As to House-Senate Conferences

Recognition to Seek a Conference

A motion to send a measure to conference is authorized by Rule XX clause 1. See CONFERENCES BETWEEN THE HOUSES. The motion is in order if the appropriate committee has authorized the motion and the Speaker in his discretion recognizes for that purpose. 94–1, Mar. 20, 1975, p 7646. The provisions of that rule—that the Speaker has discretionary authority to recognize for motions to send a bill to conference and that each such motion must be authorized by the committee having jurisdiction over the bill—prevent the use of that motion as a dilatory tactic. 92–2, Oct. 3, 1972, pp 33502, 33509. The motion is in order pursuant to clause 1 of Rule XX only if the Speaker in his discretion recognizes for that purpose. The Speaker will not recognize for the motion where he has referred the Senate amendment in question to the House committee or committees with jurisdiction and they have not yet had the opportunity to consider the amendment. 98–2, June 28, 1984, pp 19770, 19983.

Recognition for debate and control of debate time on the motion, see CONFERENCES BETWEEN THE HOUSES.

Motions to Instruct Conferees

Recognition to offer a motion to instruct House conferees on a measure initially being sent to conference is the prerogative of the minority. The Speaker recognizes the ranking minority member of the committee reporting the bill when and if that member seeks recognition to offer the motion after the request or motion to go to conference is agreed to and prior to the Speaker's appointment of conferees. 92–1, Oct. 19, 1971, pp 36832–35; 93–2, Dec. 16, 1974, pp 40174, 40175. Where two minority members of the committee which has reported a bill seek recognition to offer a motion to instruct conferees prior to their appointment by the Speaker, the Chair will recognize the senior minority member of that committee. 99–2, Oct. 10, 1986, p 30181.

Debate on a motion to instruct conferees is equally divided between a majority and a minority member unless both are in favor of the motion, in which case a Member opposed may claim one-third of the time. Rule XXVIII clause 1(b). *Manual* § 909a. If the previous question is voted down on a motion to instruct the managers on the part of the House, the motion is open to amendment and the Speaker may recognize a Member opposed to ordering the previous question to control the time and offer an amendment. 90–2, May 29, 1968, pp 15499, 15511. Division of debate time speci-

fied in clause 1(b) does not apply to an amendment offered to the motion after defeat of the previous question thereon. *Manual* § 909a.

Calling Up Conference Reports

A conference report may be called up for consideration in the House by the senior majority manager on the part of the House at the conference, and he may be recognized to do so even though he did not sign the report and was in fact opposed to it. 90–1, Dec. 6, 1967, pp 35144–51, 35163. If the senior House conferee is unable to be present on the floor to call up the report, the Speaker may recognize a junior majority member of the conference committee. 91–1, Dec. 23, 1969, pp 40982–84. The Speaker may also extend recognition to call up the report to the chairman (6 Cannon § 301) or ranking majority member of the committee with jurisdiction. 90–1, July 17, 1967, p 19032. In one instance, on a conference report considered by House conferees appointed from two House committees on separate portions of a Senate amendment, the conference report was called up by the chairman of one of those committees even though it had not been the primary committee in the House. 97–2, Dec. 21, 1982, pp 33299, 33300.

Recognition to dispose of amendments between the Houses or for debate thereon, see SENATE BILLS; AMENDMENTS BETWEEN THE HOUSES.

Reconsideration

Research References

5 Hinds §§ 5605–5705
8 Cannon §§ 2774–2795
7 Deschler Ch 23 §§ 33–41
Manual §§ 812–820

§ 1. Generally; Use of Motion

In General

By long tradition, the vote of the House on a proposition is not final and conclusive until there has been an opportunity to reconsider it. A proposition is not regarded as passed until a motion to reconsider it is disposed of or precluded. The motion to reconsider is thus the procedural device which permits the House, under Rule XVIII, to review its action on a given proposal. Its purpose is to allow the House to reflect on the wisdom of its action on the proposition. Deschler Ch 23 § 33.

Historical Background

Although not mentioned in the first rules of the House, adopted in 1789, the motion to reconsider was at that time well known in parliamentary

practice. 5 Hinds § 5605. The motion was used in the Continental Congress and in the House from its first organization. It was made the subject of a rule of the House in 1802. *Manual* § 812. In 1811, the rule of 1802 was modified by limiting the time during which the motion might be made to ''the same or succeeding day'' as the vote to be reconsidered. 12–1, Dec. 23, 1811, H. Rept. No. 38. The rule was further revised in 1880, but has existed in the rules since then with only minor changes. 5 Hinds § 5605. It is today found in Rule XVIII clause 1. *Manual* § 812.

Use in Committee of the Whole

The motion to reconsider is in order in the House and in the House *as in* Committee of the Whole (8 Cannon § 2793; Deschler Ch 23 § 33), but not in the Committee of the Whole (4 Hinds §§ 4716–4718; 8 Cannon §§ 2324, 2325; Deschler Ch 23 § 39.10; 97–1, Oct. 5, 1981, p 23154). Indeed, a request to reconsider a vote is not in order in the Committee even by unanimous consent. Deschler Ch 23 § 39.12. However, on one occasion, in lieu of a motion to reconsider, the Chairman allowed a unanimous-consent request to vacate the proceedings whereby an amendment had been adopted. Deschler Ch 23 § 39.13.

Entering and Calling Up Distinguished

A distinction should be made at the outset between *entering* the motion and making or calling up the motion. Entering the motion and consideration of the motion are separate propositions. 8 Cannon § 2785. One Member may enter the motion and another Member may call up the motion. § 4, infra. The motion must be made or entered within the two-day period allowed by the rule, but, once entered, remains pending indefinitely. §§ 5, 8, infra.

§ 2. Pro Forma Motions Distinguished

The motion to reconsider is sometimes used in a strictly pro forma manner. When so used, the motion is followed by a motion or unanimous-consent request to table the motion to reconsider. Deschler Ch 23 § 33. The effect of this procedural device is to preclude subsequent motions to reconsider (Deschler Ch 23 § 34.5), and is the accepted parliamentary mode of making the vote in question final (Deschler Ch 23 § 34). Thereafter, the proposition may be taken up again only by unanimous consent or suspension of the rules. 5 Hinds § 5640. See also Deschler Ch 23 § 38.5.

Under this pro forma procedure, which has been in common usage in the House since 1846 (5 Hinds § 5637), one Member may move to reconsider and another Member may immediately move to table that motion. Deschler Ch 23 § 34. In practice, the motion to table immediately follows

the motion to reconsider or is made simultaneously therewith. 8 Cannon § 2784. The Speaker himself often performs this perfunctory role, as when he declares, after the announcement of a vote, ''without objection, a motion to reconsider is laid on the table.'' Deschler Ch 23 § 34.

The pro forma use of the motion is generally proposed by Members who agree with the decision reflected in the vote that is the subject of the motion. A Member who is opposed to the vote must object to the pro forma motion in a timely manner and is well advised to notify the Speaker in advance of his intention to seek genuine reconsideration. Deschler Ch 23 § 34.

The pro forma use of the motion is permitted while the previous question is operating. 8 Cannon § 2784.

§ 3. Effect of Motion

Effect When Motion is Made

After the House has voted on a proposition and a motion to reconsider it is made, the effect is to suspend the proposition. 5 Hinds § 5704; Deschler Ch 23 § 33; *Manual* § 816. The motion is thereafter considered as pending, and if not acted on, will remain pending, even to succeeding sessions of the same Congress. 5 Hinds § 5684. But when a Congress expires without the House having acted on the motion, the motion fails, and the original proposition stands or falls according to the original vote. 5 Hinds § 5604 (footnote).

A motion to reconsider a bill having been made, the Speaker will normally decline to sign it until the motion is disposed of. 5 Hinds § 5705. But where a bill has been signed by the Speaker and the Vice President and has received the approval of the President it cannot be impeached on the ground that a motion to reconsider it is still pending. 5 Hinds § 5705.

Effect of Agreement to Motion

When a motion to reconsider is agreed to, the question immediately recurs on the proposition to be reconsidered. 5 Hinds § 5703; Deschler Ch 23 § 33. Thus, when the House agrees to a motion to reconsider a vote on an amendment, the amendment is again pending and the Chair may put it to a vote *de novo*. 5 Hinds § 5704. Likewise, when the House agrees to reconsider a vote ordering the yeas and nays, the question immediately recurs on ordering the yeas and nays. 5 Hinds §§ 5689–5691. However, if the proposition originally voted on was a motion for the previous question, that motion may be withdrawn after the House has voted to reconsider it, on the theory that the action of the House has effectively ''nullified'' the vote on the previous question. 5 Hinds § 5357.

As Precluding Repetition of Motion

When a motion to reconsider has been made and acted upon, a second motion to reconsider is not ordinarily in order. Deschler Ch 23 § 39.16. Otherwise, it is reasoned, motions to reconsider could be made interminably. 5 Hinds § 5689. Thus, a vote ordering the previous question may be reconsidered only once. 5 Hinds § 5655; *Manual* § 815. And one motion to reconsider the yeas and nays having been acted on, another motion to reconsider is not in order. 5 Hinds § 6037. Similarly, the motion to reconsider a vote on a proposition having been once agreed to, and that vote having again been taken, a second motion to reconsider may not be made unless the nature of the proposition has been changed by amendment. 5 Hinds §§ 5685–5688; 8 Cannon § 2788. The general rule that precludes the repetition of the motion is applied even where the House rejects the first motion by laying it on the table. 5 Hinds §§ 5632 *et seq*.; Deschler Ch 23 § 39.15. But the tabling of a motion to reconsider the vote whereby the House has amended a Senate amendment does not preclude the House from acting on a subsequent Senate amendment to that House amendment, or considering any other proper motion to dispose of an amendment which might remain in disagreement after further Senate action. 98–1, Oct. 5, 1983, p 27323.

§ 4. Who May Offer Motion

The rule authorizing the motion to reconsider requires the Member making the motion to be a ''member of the majority,'' but permits the motion to be called up by ''any Member.'' Rule XVIII clause 1. *Manual* § 812. Under this rule, the *entering* of the motion and the *consideration* of the motion are regarded as separate propositions. 8 Cannon § 2785. Although the rule permits one Member who qualifies to enter or to make the motion and another Member to call up the motion, under the modern practice the motion is rarely ''entered'' but is considered pending when made. The mover and the maker are one and the same and thus must qualify as being on the prevailing side of the issue to be reconsidered. Deschler Ch 23 § 35.5. The proponent of the proposition voted on is entitled to prior recognition to move for its reconsideration. 2 Hinds § 1454.

The requirement of the rule that the one making the motion must be a ''member of the majority'' (*Manual* § 812) is construed to mean a Member who voted on the prevailing side of the question (103–1, Mar. 24, 1993, p ____); those voting with the losing side are considered not qualified. 92–1, Dec. 9, 1971, p 45475; 95–2, Apr. 20, 1978, p 10990; 96–1, Sept. 20, 1979, pp 25512, 25513. A similar rule is followed with respect to pro forma motions to reconsider. Any Member may object to the Chair's statement that

''without objection'' a motion to reconsider a vote just taken be laid on the table, and need not have voted on the prevailing side to make such an objection; but if objection is made, the Chair's statement is of no effect, and only a Member who voted on the prevailing side on a record vote may offer the motion to reconsider the vote. 99–2, Aug. 15, 1986, p 22139.

Likewise ineligible to move the reconsideration of a vote are Members who were absent at the time of the vote (5 Hinds § 5615) or who failed to vote (8 Cannon § 2774) or who were paired on the vote with another Member (5 Hinds § 5614).

The provision of the rule that the motion be made ''by any member of the majority'' is construed, in the case of a tie vote, to mean any Member of the prevailing side—that is, a Member voting in the negative (a tie vote resulting in the defeat of the proposition). 5 Hinds § 5616; Deschler Ch 23 § 35.2. There is authority to the contrary, however. 5 Hinds § 5615. ''Majority'' has also been construed to mean the prevailing side, though a minority, whose votes defeated a proposition that required a two-thirds vote for approval. 5 Hinds §§ 5617, 5618. However, when a vote is not recorded, any Member, regardless of how he voted, may enter the motion. Deschler Ch 23 § 33; 102–2, Sept. 23, 1992, p ____. See also 8 Cannon § 2775. Any point of order relating to the eligibility of the Member to offer the motion should be raised before the ordering of the vote on the motion. Deschler Ch 23 § 35.4.

§ 5. When Motion is in Order

During the Continental Congress, there was no time limit on when the motion to reconsider could be made, and the Congress often reconsidered matters passed on a preceding day or even several days or months before. 5 Hinds § 5605. Today, the rule authorizing the reconsideration of a vote provides that the motion is in order ''on the same or succeeding day'' as that vote, and that ''thereafter'' any Member may call it up. Rule XVIII clause 1. This means that the motion to reconsider may be made or entered at any time during the day on which the vote sought to be reconsidered is taken (5 Hinds § 5674) or on the next legislative day after the question to be reconsidered was voted on (96–1, Sept. 20, 1979, pp 25512, 25513). The entry of the motion during the two days prescribed by the rule is in order even after the previous question is ordered or when a question of the highest privilege is pending. 5 Hinds § 5673; 8 Cannon § 2785. And once the motion has been entered within the two-day period, it remains pending indefinitely. See § 8, infra.

In accordance with the general rule that the motion to reconsider is in order at any time during the two days prescribed by the rule, the motion has been held in order:

- After a demand for the previous question on a related matter (5 Hinds § 5656) or while the previous question is operating (5 Hinds §§ 5657–5672).
- Pending a motion to go into the Committee of the Whole (8 Cannon § 2785).
- In time set apart for other business if the matter sought to be reconsidered is entertained during such time by unanimous consent (5 Hinds § 5683).
- After the bill to be reconsidered has gone to the Senate (5 Hinds §§ 5666, 5667).
- After the Senate has been informed of agreement by the House to a Senate amendment (5 Hinds § 5672).
- After the bill has gone to the President (5 Hinds § 5668).

The motion to reconsider is not in order:

- In Committee of the Whole (§ 1, supra).
- When dilatory and manifestly for the purpose of delay (5 Hinds §§ 5731–5733, 5735, 5739; 8 Cannon §§ 2797, 2815, 2822).
- When a special order prohibits ''intervening motions'' (4 Hinds § 3203).
- While another Member has the floor (8 Cannon § 2785).
- While the House is dividing on a motion (8 Cannon § 2791).

§ 6. Use in Standing Committees

The motion to reconsider is in order in the procedure of standing committees, and in the absence of a committee rule governing the motion, the committee will be governed by the analagous House rule. 8 Cannon § 2213. Thus the motion to reconsider may be entered in a committee on the same day as the vote to be reconsidered, or on the next day thereafter, provided the committee convenes with a quorum present at a properly scheduled meeting at which business of that class is in order. 8 Cannon § 2793; Deschler Ch 23 § 33; *Manual* § 814. Sometimes the motion must be applied to a series of propositions to achieve a desired result. In a committee, reconsideration of an amendment may require that the motion to report be first reconsidered, then the ordering of the previous question, before a motion can be made to reconsider the amendment.

A motion to reconsider is sometimes used in a committee when it has obtained a quorum, to report out from that committee bills approved earlier in the day in the absence of a quorum. Deschler Ch 23 § 39.1. Any point of order against the use in a committee of such a motion to report out mul-

tiple bills originally adopted in the absence of a quorum should be made in the committee and not in the House. Deschler Ch 23 § 39.2.

§ 7. Forms

Set out below are the forms for entering the motion to reconsider, for subsequently calling it up and bringing it to a vote, and for offering the so-called pro forma motion.

Entering the Motion; Calling Up

MEMBER: I desire to enter a motion to reconsider the vote by which the bill H.R. ____ [*or motion, conference report, or other proposition*] passed the House [*or was agreed to, sent to conference, rejected, or other action*].

SPEAKER: The gentleman enters a motion to reconsider the vote on the bill H.R. ____, which will be considered as pending.

Note: Although the motion must be made or entered within the two-day period prescribed by the rule, it may be called up on any subsequent day unless another question is pending before the House. § 8, infra.

MEMBER: I call up the pending motion to reconsider the vote on the bill H.R. ____.

Note: Where a question has been divided for the vote, a separate motion to reconsider is necessary for each vote, and should be first made as to the first portion of the divided proposition. 5 Hinds § 5609.

Making the Motion

MEMBER: I move to reconsider the vote by which the bill H.R. ____ was adopted [*or rejected*].

SPEAKER: The gentleman moves to reconsider the vote on H.R. ____. As many as are in favor of the motion say ''aye.''

Note: The vote on a motion to reconsider may be taken by various methods, including a voice vote or a roll call vote. 96–1, Sept. 20, 1979, p 22512.

The Pro Forma Motion—By a Member

MEMBER: I move to reconsider the vote by which the bill H.R. ____ passed the House, and ask unanimous consent that the motion be laid on the table.

SPEAKER: The gentleman moves to reconsider the vote by which the bill H.R. ____ passed the House, and asks to lay that motion on the table. Without objection it is so ordered.

Pro Forma Motion—By the Speaker

SPEAKER: Without objection, the motion to reconsider is laid on the table.

Note: Any Member may object to the Chair's statement that ''without objection'' a motion to reconsider a vote just taken be laid on the table; if objection is made, the Chair's statement is then of no effect, and a qualified Member may call for the reconsideration of the vote. 99–2, Aug. 15, 1986, p 22139; 103–1, Feb. 17, 1993, p ____.

§ 8. When to Call Up Motion

While a motion to reconsider must be made or entered within the two-day period prescribed by the applicable rule (§ 5, supra), no time limit is imposed as to when the motion may be called up for consideration and debate. In theory, it may be called up at pleasure. 8 Cannon § 2787. When once entered, the motion remains pending indefinitely, even into a succeeding session of the same Congress. 5 Hinds § 5684.

While the motion to reconsider may be entered at any time during the prescribed period, even when a question of the highest privilege is pending (§ 5, supra), it may not be considered while another question is pending before the House (5 Hinds § 5673; 8 Cannon § 2785). And when a motion to reconsider relates to a bill belonging to a particular class of business, the consideration of the motion is in order only when that class of business is again in order. 5 Hinds § 5677; 8 Cannon §§ 2785, 2786. A motion to reconsider the vote on a bill on the Private Calendar, for example, may be entered on any day on which recognition is had for that purpose, but the motion may be taken up for consideration only on a Private Calendar day. 8 Cannon § 2786.

§ 9. Precedence and Privilege of Motion

By House rule, the motion to reconsider takes precedence of all other questions except the consideration of a conference report or a motion to adjourn. Rule XVIII clause 1. *Manual* § 812. Accordingly, when the motion to reconsider is in order and no other question is pending (§ 5, supra) the motion is highly privileged for consideration (8 Cannon § 2787; 103–1, Mar. 24, 1993, p ____). The high privilege given the motion by the rule gives it precedence, with certain exceptions, over any motion relative to the subject to which the motion to reconsider refers. 5 Hinds § 5673. The precedence given the motion by the rule permits it to be made even after the previous question has been moved (5 Hinds § 5656) or while it is operating (5 Hinds §§ 5657–5662; 8 Cannon § 2784). It also takes precedence of a motion to go into the Committee of the Whole. 8 Cannon § 2785. A motion to reconsider a secondary motion (such as a motion to postpone) which has been previously offered is ordinarily also highly privileged, and may even

be entertained by the Chair after the manager of the pending proposition has yielded time to another Member and before that Member has begun his remarks. 96–2, May 29, 1980, p 12663.

Although generally of high privilege, the motion to reconsider yields or is subject to:

- The question of consideration (8 Cannon § 2437).
- The consideration of conference reports (*Manual* § 812).
- The motion to lay on the table (8 Cannon § 2652; Deschler Ch 23 § 38.1) unless the Chair has put the question on the motion to reconsider (96–1, Sept. 20, 1979, p 25512; *Manual* § 818).
- A motion to adjourn (*Manual* § 812).

§ 10. Quorum Requirements

In general, the motion to reconsider cannot be agreed to in the House in the absence of a quorum when the vote to be reconsidered required a quorum. 5 Hinds § 5606. A quorum is not necessary on a motion to reconsider the vote whereby the yeas and nays were ordered, since the yeas and nays may be ordered by one-fifth of the Members present. 5 Hinds § 5693. And on votes incident to a call of the House, the motion to reconsider may be entertained, although a quorum may not be present. 5 Hinds §§ 5607, 5608.

§ 11. Debate and Voting; Withdrawal

Debate

The motion to reconsider is debatable for one hour, under the control of the Member making the motion (89–1, Sept. 13, 1965, p 23068), if the proposition proposed to be reconsidered was debatable. 5 Hinds § 5696; 8 Cannon § 2792; Deschler Ch 23 § 41.1. If the proposition proposed to be reconsidered was not debatable, then the motion calling for reconsideration is itself not debatable. 5 Hinds §§ 5694, 5698; Deschler Ch 23 § 33. Thus, the motion to reconsider a vote ordering the previous question is not debatable. 101–2, Sept. 25, 1990, p ____.

The view has been taken that a motion to reconsider a vote may be debatable even if the previous question was operating at the time of such vote, on the theory that the vote of the House ''exhausted the previous question so as to open up the motion to debate.'' 5 Hinds §§ 5694, 5700. But the greater weight of authority holds that if the proposition to be reconsidered was voted on under the operation of the previous question, the motion to reconsider is not debatable, a primary function of the previous question being to terminate debate. 5 Hinds §§ 5656, 5701; Deschler Ch 23 § 38.7;

Manual § 819; 96–1, Sept. 20, 1979, p 25512. And if the motion is agreed to, and if that proposition is again taken up, it is voted on without debate (96–2, May 29, 1980, pp 12663–66) unless the ordering of the previous question is itself reconsidered.

Voting

A simple majority vote is sufficient to adopt a motion to reconsider, even when the vote reconsidered requires two-thirds for affirmative action. 5 Hinds §§ 5617, 5618; 8 Cannon § 2795; *Manual* § 817. A majority vote is also required to reconsider a vote ordering the yeas and nays, although one-fifth is sufficient to order the yeas and nays. 5 Hinds §§ 5689–5692; 8 Cannon § 2790. And if the House votes to reconsider, the yeas and nays may again be ordered by one-fifth. 5 Hinds § 5689.

Withdrawal of Motion

The motion to reconsider having been made within the time specified by the rules—that is, on the same or succeeding day as the vote on the proposition to be reconsidered—it may not be withdrawn without the consent of the House thereafter. Rule XVIII clause 1. *Manual* § 812.

§ 12. Application to Particular Propositions

Generally

The rule authorizing reconsideration applies whenever ''a motion has been made and carried or lost. . . .'' Rule XVIII clause 1. *Manual* § 812. The term ''motion'' in this rule has been construed so as to permit reconsideration of a wide variety of propositions, including bills and resolutions and amendments thereto (§ 14, infra), various motions and requests (§ 13, infra), and amendments pending between the two Houses and conference reports thereon (§ 15, infra). The motion is applicable whether the passage of the proposition required a simple majority or a two-thirds vote. 8 Cannon § 2778.

House Orders

The motion to reconsider applies to the vote on a House order, although the execution of that order has begun. 3 Hinds § 2028; 5 Hinds § 5665. The motion may be applied to a vote ordering the yeas and nays (5 Hinds § 6029; 8 Cannon § 2790) or to a vote refusing the yeas and nays (5 Hinds § 5692) or to the vote by which the House refuses to order a third reading of a bill (5 Hinds § 5656; 8 Cannon § 2777). The motion to reconsider may also be used to reopen the proceedings whereby the House has voted to expunge certain matter from the *Congressional Record*. Deschler Ch 23 § 39.7.

The motion may not be applied to the vote by which the House has decided a question of parliamentary procedure submitted by the Speaker for the decision of the House. 8 Cannon § 2776; Deschler Ch 23 § 33; *Manual* § 815. But the motion may be applied to a vote laying an appeal on the table. 5 Hinds § 5630. Compare 5 Hinds § 5631.

Referrals

By House rule, measures referred to a committee may not be brought back into the House on a motion to reconsider. Rule XVIII clause 2. *Manual* § 820. This rule, which was adopted in its present form in 1880, was intended to prevent a Member from bringing back into the House, on a motion to reconsider, any matter which he had obtained unanimous consent to introduce or submit for reference. 5 Hinds § 5647. The rule was intended to apply to the initial formal reference to a committee, and not where the measure has been reported back from committee for House consideration. 5 Hinds § 5649. Thus, while the motion may not be applied to a House vote on a simple referral to a committee (8 Cannon § 2782), it is in order to reconsider the vote whereby the House has recommitted a measure to a committee (Deschler Ch 23 § 39.6). However, it is too late to reconsider such a vote after the committee report has been made. 5 Hinds § 5651.

§ 13. — Other Motions and Requests

Generally

The motion to reconsider is applied to permit the House to review its vote on certain motions, including:

- An affirmative vote on a motion for the previous question (5 Hinds § 5655), unless the previous question has been partially executed, as by a vote on certain amendments (5 Hinds §§ 5653, 5654; Deschler Ch 23 § 33).
- A vote on the motion to lay on the table, whether decided in the affirmative (5 Hinds §§ 5628, 5695, 6288; 8 Cannon § 2785) or in the negative (5 Hinds § 5629). See also Deschler Ch 23 § 38.1.
- An affirmative vote on a motion to go into the Committee of the Whole. 5 Hinds § 5638; Deschler Ch 23 § 33; 95–2, Apr. 20, 1978, p 10990.
- An affirmative vote on the question of consideration. 103–2, Oct. 4, 1994, p ____.
- An agreement by the House to a unanimous-consent request. 8 Cannon § 2794; Deschler Ch 23 § 33.

When Not Applicable

The motion to reconsider may not be applied to votes rejecting certain motions, such as:

- A vote rejecting a motion to go into the Committee of the Whole. 5 Hinds § 5641.
- A vote rejecting the question of consideration. 5 Hinds §§ 5626, 5627; Deschler Ch 23 § 39.14.
- A vote rejecting the motion to suspend the rules. 5 Hinds § 5645; 8 Cannon § 2781; Deschler Ch 23 § 33.
- A vote rejecting a motion to recess. 5 Hinds § 5625.
- A vote rejecting a motion to adjourn. 5 Hinds §§ 5620–5622.
- A vote rejecting a motion to adjourn to a day certain. 5 Hinds § 5624. But see 5 Hinds § 5623.

Certain motions or questions are not subject to the motion to reconsider because of the adoption of ''expedited procedures'' prescribed by statute and intended to bring a legislative matter to a final conclusion without all the procedural protections normally accorded. See *Manual* § 1013, for examples of such laws. The Congressional Budget Act, § 305(a), precludes the motion to reconsider the vote by which a concurrent resolution on the budget is agreed to or disagreed to. The vote on adoption of a conference report on such a resolution is also protected from the motion to reconsider.

§ 14. — Bills and Resolutions; Amendments

The motion to reconsider may be applied to the vote by which a bill was passed in the House (5 Hinds § 5666), including a private bill (4 Hinds §§ 3468, 3469), to a vote on the engrossment of the bill (5 Hinds § 5663), or to a vote refusing to order a third reading of the bill (8 Cannon § 2777). The motion is also applied to permit reconsideration of a vote on a simple resolution (5 Hinds § 5609), such as a special-order resolution from the Committee on Rules (101–2, Sept. 25, 1990, p ____), or on a joint resolution (96–1, Sept. 20, 1979, p 25512).

The motion to reconsider may be applied to permit reconsideration of a vote on an amendment, but if the motion is not made until after the passage of the amended bill, such reconsideration can be secured only by a motion to reconsider the vote on the passage of the bill. 8 Cannon § 2789. Similarly, to entertain a motion to reconsider a vote on an amendment to an amendment, it is first necessary to vote to reconsider the vote by which the original amendment, as amended, was disposed of. Deschler Ch 23 § 33.

§ 15. — Amendments Between the Houses; Conference Reports

A motion to reconsider may be applied to a vote on a Senate amendment to a House bill. And the fact that the House has informed the Senate that it has voted to agree to such an amendment does not prevent a motion to reconsider that vote. 5 Hinds § 5672. But such a motion must be timely made. After a conference has been agreed to and the managers for the House appointed, it is too late to move to reconsider the vote whereby the House acted on an amendment in disagreement. 5 Hinds § 5664.

The motion to reconsider may be applied to a vote on a conference report (Deschler Ch 23 § 39.4) or to a vote recommitting a conference report (Deschler Ch 23 § 39.5). And after disposition of a conference report and amendments reported therefrom in disagreement, it is in order to move to reconsider the vote on a motion disposing of one of the amendments. 98–1, Oct. 5, 1983, p 27323.

Although the tabling of a motion to reconsider ordinarily prevents the House from reconsideration of the vote in question (§ 2, supra), the laying on the table of a motion to reconsider the vote whereby the House has amended a Senate amendment does not preclude the House from acting on a subsequent Senate amendment to that House amendment, or considering any other proper motion to dispose of an amendment which might remain in disagreement after further Senate action. *Manual* § 815.

§ 16. — Measures Sent to the Senate or the President

The motion to reconsider may be applied to a measure which has been sent to the Senate (5 Hinds §§ 5666, 5667), and if that motion is agreed to, a motion to recall the measure is privileged (5 Hinds § 5669). Reconsideration of the vote on the measure is permitted even if the measure has passed both Houses (4 Hinds §§ 3466–3469), and even if the measure has been sent to the President (5 Hinds § 5668). It would appear, however, that once the bill has been sent to the President *and* signed by him, it could not be called into question pursuant to a pending motion to reconsider the measure. 5 Hinds § 5704. And if the President returns the bill to the House with his objections, and the House votes on the passage of the bill notwithstanding the objections of the President, that vote is not subject to the motion to reconsider because the U.S. Constitution (art. I section 7) expressly provides for the manner in which such bills are to be reconsidered. 5 Hinds § 5644; 8 Cannon § 2778.

Refer and Recommit

A. Generally; Motions

B. The Simple Motion to Refer

C. Referral Pending Motion to Strike Enacting Clause

D. Referral Pending or After Ordering the Previous Question

E. Recommittal Pending Final Passage

F. Motions With Instructions

Research References
5 Hinds §§ 5521–5604

8 Cannon §§ 2695–2773
7 Deschler Ch 23 § 25
Manual §§ 420, 427, 448–451, 494, 782, 787, 788, 804, 808

A. Generally; Motions

§ 1. In General

When bills are first introduced they are referred to one or more committees by direction of the Speaker. See INTRODUCTION AND REFERENCE OF BILLS. When a bill has been reported by a committee, it is referred to the appropriate calendar, also by direction of the Speaker. See CALENDARS.

Motions for the referral or recommittal of a matter to a committee are permitted at certain narrowly circumscribed stages of the legislative process. These motions are:

- The ordinary motion *to refer* when ''a question is under debate'' under Rule XVI clause 4. *Manual* § 782.
- The motion *to commit* a matter to a committee pending or after the ordering of the previous question thereon under Rule XVII clause 1. *Manual* § 804.
- The motion *to recommit* a bill or joint resolution to a committee after the previous question has been ordered to final passage under Rule XVI clause 4. *Manual* § 782.
- The motion *to refer* a bill to a committee pending a vote in the House on a motion to strike the enacting words as provided in Rule XXIII clause 7. *Manual* § 875.

§ 2. Form and Effect of Motion

MEMBER: Mr. Speaker, I move to refer (or commit or recommit) the bill (or resolution) to the Committee on _____.

The motion may be subject to debate, depending on the applicable rule, but the motion itself may not include a preamble or an argument or explanation. 5 Hinds § 5589; 8 Cannon § 2749. However, referral motions may be made with or without instructions. (See §§ 17–20, infra.) The ''straight'' motion (*i.e.*, without instructions) sends a measure to a specified committee and leaves the disposition thereof to the discretion of the committee. 7 Deschler Ch 23 § 25. But the committee must confine itself to the instructions, if there be any. 4 Hinds § 4404; 5 Hinds § 5526.

The motion to recommit with instructions does not take precedence over a simple motion to recommit. 91–2, Nov. 25, 1970, p 38997. 8 Cannon §§ 2714, 2758.

§ 3. Referral to Particular Committees

The motion to refer, commit, or recommit may specify that the reference shall be to a named standing committee (4 Hinds § 4401), or to two or more standing committees (94–1, June 19, 1975, p 19787), without regard to the usual rules governing committee jurisdiction. 4 Hinds § 4375; 5 Hinds § 5527. The motion may provide for referral to a committee other than that reporting the underlying measure. 8 Cannon § 2696.

A matter may be referred on motion to the Committee of the Whole (5 Hinds §§ 5552, 5553, 6631) or to a select committee, including one that is established pursuant to the motion (4 Hinds § 4401). But motions for the referral of a matter to a subcommittee are not in order. 8 Cannon § 2739.

§ 4. Motions in Committee of the Whole

The motions permitted by the House rules for the referral of a matter do not apply in Committee of the Whole. 4 Hinds § 4721; 8 Cannon §§ 2326, 2327. It is in order under certain circumstances in the Committee to move that the Committee rise and report back to the House with the *recommendation* that the measure under consideration be recommitted, but such a motion is entertained only at the completion of the reading of the bill for amendment (4 Hinds §§ 4761, 4762), and may be (and usually is) precluded by the language of a special rule from the Rules Committee. 7 Deschler Ch 23 § 26.5.

The House, while acting in the House *as in* Committee of the Whole, may refer a matter to a committee. 5 Hinds §§ 4931, 4932.

B. The Simple Motion to Refer

§ 5. In General

Generally; When to Offer

A simple motion ''to refer'' is permitted by the first sentence of Rule XVI clause 4 when a question is ''under debate.'' *Manual* § 782. This motion is in order pending the consideration of the underlying matter. 102–2, Mar. 12, 1992, p ____. The motion may be offered by any Member, who need not qualify as being in opposition to the pending question. 7 Deschler Ch 23 § 25.

The ordinary motion to refer a proposition under this rule may be offered before the proponent of the proposition is recognized to control debate thereon. 99–1, Feb. 7, 1985, p 2220; 99–1, Mar. 4, 1985, p 4277. If the proposition is called up in the House under circumstances which would per-

mit it to be debated under the hour rule, a motion to refer under Rule XVI clause 4 is in order before debate begins. 96–1, Mar. 1, 1979, p 3746. The motion may not be offered while another Member holds the floor in debate. 6 Cannon § 468; 8 Cannon § 2742. Once disposed of, it cannot be offered again at the same stage of the question on the same day. Rule XVI clause 4. *Manual* § 782.

Application of Motion

The simple motion to refer is permitted when ''a question'' is under consideration pursuant to Rule XVI clause 4. *Manual* § 782. A bill before the House under the general rules of the House is subject to the motion. The motion is applicable to bills called up from the House Calendar, such as resolutions from the Committee on House Oversight, resolutions adopting the rules of the House, and to articles of impeachment (6 Cannon § 549). The motion has been applied to a vetoed bill (4 Hinds §§ 3550, 3551), with or without the veto message (7 Cannon § 1104). (Referral of Presidential messages, see *Manual* § 884.)

A motion to refer is also applicable to resolutions raising a question of the privileges of the House (99–1, Feb. 7, 1985, p 2220; 99–1, Mar. 4, 1985, p 4277), such as:

- A resolution involving the expulsion of a Member. 96–1, Mar. 1, 1979, p 3746.
- A resolution alleging the improper representation by House counsel of a legal position of a group of Members of the House in a brief filed in the Supreme Court. 101–2, Mar. 22, 1990, p ____.
- A resolution instructing the disclosure of information concerning the operation of a bank in the office of the Sergeant at Arms. 102–2, Mar. 12, 1992, p ____.

Referral With Instructions

The motion to refer may include instructions or be amended to include instructions. 5 Hinds § 5521. If the previous question is rejected on the motion, amendments offering proper instructions to the motion are in order. 97–2, Aug. 13, 1982, p 20978. Instructions generally, see §§ 17–20, infra.

§ 6. Precedence; Relation to Other Motions

The simple motion to refer under Rule XVI clause 4 takes precedence over the motions to amend or to postpone indefinitely, but yields to the motions to adjourn, to table, for the previous question, or to postpone to a day certain. *Manual* § 782. Thus, since the motion to refer takes precedence over the motion to amend, the Chair may recognize the Member seeking to offer

the preferential motion before the less preferential motion is read. 97–2, Aug. 13, 1982, pp 20969, 20975–78.

The motion for the previous question takes precedence over the motion to refer under clause 4 Rule XVI. *Manual* § 782. But where the motion to refer under that rule is preempted by the motion for the previous question on a resolution on which there has been no debate, rejection of the motion for the previous question leaves the motion to refer pending. 101–2, Mar. 22, 1990, p ____.

Pursuant to Rule XVI clause 4, the motion to lay on the table takes precedence over, and is applicable to, the motion to refer. 97–2, Aug. 13, 1982, p 20977.

§ 7. Debate on Motion

A motion to refer under clause 4 of Rule XVI (before the previous question is ordered) is separately debatable pending the consideration of the underlying matter. 102–2, Mar. 12, 1992, p ____. The motion is debatable under the hour rule. 101–2, Mar. 22, 1990, p ____. The scope of the debate is narrowly confined and may not extend to the merits of the underlying matter. 5 Hinds §§ 5565–5568; 6 Cannon §§ 65, 549. Such debate is terminated by the adoption of the previous question on the motion. 7 Deschler Ch 23 § 25.

C. Referral Pending Motion to Strike Enacting Clause

§ 8. In General

A House rule permits the offering of a motion to refer a measure to a committee, with or without instructions, pending concurrence by the House in a recommendation from the Committee of the Whole that the enacting clause of a measure be stricken. Rule XXIII clause 7. *Manual* § 875. As noted elsewhere, the recommendation that the enacting clause be stricken may interrupt and supersede the offering of amendments in Committee of the Whole, and if agreed to by the House, defeats the bill. See COMMITTEES OF THE WHOLE.

The motion to refer permitted by this rule is to be distinguished from the motion to recommit that may be made pending final passage of the bill under Rule XVI clause 4. The motion to recommit pending passage insures the right of the minority to have a final opportunity to perfect the bill or to return it to committee. § 14, infra. In contrast, the motion to refer under Rule XXIII comes before action on the recommendation that the enacting

clause be stricken and allows the friends of the original bill to avert its demise by referring it to committee where it may be considered in the light of the House action. 8 Cannon § 2629.

The motion to refer permitted by Rule XXIII may include instructions to report back forthwith with an amendment to the underlying bill. 103–2, Apr. 14, 1994, p ____.

The recommendation that the enacting clause be stricken may not be combined with a recommendation that the bill be recommitted to a committee. Deschler Ch 19 § 10.10.

Automatic Referral

When the House disagrees to the recommendation of the Committee in striking out the enacting words and does not refer the bill under the provisions of the rule, it goes back to the Committee of the Whole, where it becomes unfinished business. This process is automatic and does not require a motion. 5 Hinds §§ 5326, 5345, 5346; 8 Cannon § 2633.

D. Referral Pending or After Ordering the Previous Question

§ 9. In General; When in Order

The motion ''to commit'' is authorized under the rule governing the motion for the previous question. Clause 1 Rule XVII. Under this rule, the motion is in order pending the motion for or after the previous question has been ordered on passage or adoption. The motion may be made with or without instructions and may provide for referral to a standing or select committee. *Manual* § 804. It is not necessary that the underlying proposition has been reported from a committee. 95–2, July 12, 1978, p 20504. Repetition of the motion is not permitted. Only one proper motion to commit is in order under the rule. 5 Hinds § 5577.

If the previous question has been ordered on a proposition on which there has been no debate, and a Member insists on the 40 minutes of debate permitted by rule in such cases (see *Manual* § 907) the motion to commit should be made only after such debate. 99–1, May 8, 1985, p 11073.

The motion to commit may be made pending the demand for the previous question on passage or adoption (5 Hinds § 5576), and at this point is subject to the motion to table. When the previous question is ordered on all stages of a bill to final passage, the motion to commit is not in order before the engrossment or third reading. 5 Hinds §§ 5578–5581.

Instructions With Motion

A motion to commit under Rule XVII clause 1 may be offered with instructions, such as an instruction to report back with an amendment. 98–1, Jan. 3, 1983, p 49; 99–1, Jan. 3, 1985, p 411. Thus, a motion to commit a resolution electing minority members to standing committees may be offered with instructions to a select committee to report back ''forthwith'' with an amendment adding the names of additional Members. 97–1, Jan. 28, 1981, p 1146. Instructions generally, see §§ 17–20, infra.

Amendments to Motion

A motion to commit may be amended, as by adding instructions, unless such amendment is precluded by ordering the previous question on the motion. 5 Hinds §§ 5582–5584; 8 Cannon § 2695.

§ 10. Application of Motion

The rule authorizing the motion to commit pending or after the previous question is construed as applying across a broad range of legislative business, including:

- Bills and joint resolutions. 5 Hinds § 5576.
- Simple resolutions (5 Hinds § 5573) and concurrent resolutions (96–1, Nov. 28, 1979, p 33914).
- Conference reports if the other House has not discharged its managers. See CONFERENCE BETWEEN THE HOUSES.
- Senate amendments being considered in the House before the stage of disagreement. 5 Hinds § 5575. *Manual* § 808.
- A resolution stating a question of privilege (98–1, June 29, 1983, p 18104), such as a disciplinary resolution (101–2, July 26, 1990, p ____), or a resolution certifying the contempt of a committee witness (92–1, July 13, 1971, pp 24723, 24752).
- A resolution electing minority members to standing committees. 97–1, Jan. 28, 1981, p 1146.

The motion to commit may not be separately applied to amendments to the underlying proposition. 7 Deschler Ch 23 § 25. When the previous question has been ordered on a simple resolution and a pending amendment thereto, the motion to commit should be offered after the vote on the amendment. 5 Hinds §§ 5585–5588.

The motion does not apply to special orders reported by the Rules Committee. 5 Hinds §§ 5598–5601; 89–1, July 26, 1965, p 18087. A House rule prevents the Speaker from entertaining dilatory motions until Rules Committee reports are fully disposed of. Rule XI clause 4(b). If the previous

question is rejected, this restriction no longer strictly applies. *Manual* § 729b.

§ 11. Who May Offer Motion; Recognition

As noted elsewhere in this article, under clause 4 of Rule XVI the prior right to recognition on a motion to recommit a bill pending final passage is given to an opponent of the bill. § 14, infra. This principle is also applied to a motion to commit under Rule XVII clause 1 pending the demand for, or the ordering of, the previous question. 7 Deschler Ch 23 § 25. Thus, an opponent, preferably the Minority Leader or a minority member on the reporting committee, in order of seniority, has priority of recognition to offer the motion under Rule XVII. See *Manual* §§ 788, 808. However, if the underlying matter is a resolution offered as a question of the privileges of the House, the Member offering the motion to commit need not qualify as stating his opposition to the resolution. 98–1, Apr. 28, 1983, p 10417.

It is the prerogative of the minority, when the House is operating under general parliamentary procedure, to offer a motion to commit the resolution adopting the rules, but the minority member offering the motion need not qualify as opposed to the resolution. 98–1, Jan. 3, 1983, p 49; 99–1, Jan. 3, 1985, p 410–413; 101–1, Jan. 3, 1989, p 81.

§ 12. Debate on Motion

Under clause 1 of Rule XVII a motion to commit is not separately debatable after the previous question is ordered on the underlying proposition. 5 Hinds § 5582; 102–2, Mar. 12, 1992, p ____. Thus, the previous question having been ordered on a resolution prior to adoption of the rules, the motion to commit—with or without instructions—is not debatable. 97–1, Jan. 5, 1981, p 112. As to the debate permitted on a motion to recommit pending final passage of a bill or joint resolution, see § 15, infra.

E. Recommittal Pending Final Passage

§ 13. In General

The motion to recommit a bill or joint resolution after the previous question has been ordered on the question of final passage is authorized by clause 4 Rule XVI. *Manual* § 782. This rule, which includes provisions permitting debate on the motion (§ 15, infra), does not apply to simple resolutions, concurrent resolutions, or to conference reports. *Manual* § 787.

When in Order

The motion to recommit a bill is properly made after the engrossment and third reading of the bill. 87–1, June 12, 1961, p 10080. A Member seeking to offer the motion must be on his feet addressing the Chair after the engrossment and third reading of the bill and before the Chair puts the question on passage of the bill. 98–2, June 6, 1984, p 15164. The motion comes too late when the Chair has put the question on passage and has announced the apparent result of the vote. 91–1, Dec. 11, 1969, p 38536.

Repetition of Motion

The authorizing rule specifies that *one* motion to recommit is in order, the previous question having been ordered on passage. *Manual* § 782. But if the motion is ruled out on a point of order, its proponent or another qualifying Member is entitled to offer a proper motion to recommit. 8 Cannon § 2713; 102–1, Sept. 17, 1991, p ____; 102–2, Apr. 1, 1992, p ____.

Amendments to Motion

A motion to recommit is subject to amendment until the previous question is ordered on the motion. 91–1, Aug. 11, 1969, p 23143. If the previous question on the motion is voted down, the motion is open to amendment. 90–2, June 26, 1968, p 18940; 91–2, May 6, 1970, p 14490. The amendment must be germane to the pending measure and not necessarily to the original motion (see § 17, infra). Any point of order against an amendment to the motion should be raised immediately following the reading of the amendment. 93–2, Feb. 5, 1974, pp 2079–81.

§ 14. Who May Offer Motion; Recognition

THE SPEAKER: Is the gentleman opposed to the measure?

This is the threshold question to be put by the Chair in determining a Member's qualifications to offer a motion to recommit. Deschler Ch 23 § 25; 87–1, Mar. 1, 1961, pp 2965, 2989. At one time the applicable rule was construed to give the friends of the bill an opportunity to correct any errors in the bill before the House voted on passage. 8 Cannon § 2762. Under the modern rule (Rule XVI clause 4), the Speaker is required to give preference in recognition to a Member who is opposed to the bill (*Manual* § 782), whether the motion is made with or without instructions (*Manual* § 788). This rules change was intended to allow the minority a final opportunity to return the bill to committee or (through instructions) to have its version of the bill brought to a vote. 7 Deschler Ch 23 § 25.

In recognizing a Member to move to recommit, the Chair does not attempt to assess the degree of that Member's opposition. 102–1, Oct. 23, 1991, p ____. The Chair makes no distinction between Members who are unqualifiedly opposed and those who phrase their opposition ''to the bill in its present form.'' 91–1, Oct. 3, 1969, p 28487; 91–2, Apr. 16, 1970, pp 12063, 12092.

Among Members opposed to the bill, the Speaker will first look to the Minority Leader (*Manual* § 788), then to minority members of the committee reporting the bill in their order of seniority on the committee, then to other members of the minority, and finally to majority members opposed to the bill. 94–1, July 10, 1975, pp 22014, 22015. See also 90–1, June 13, 1967, p 15587; 90–2, Apr. 22, 1968, p 10126–30; 96–1, Apr. 24, 1979, p 8360. These principles on recognition are followed even where a bill under consideration was not reported from committee. A senior minority member of the committee of jurisdiction would still be recognized by the Speaker for a motion to recommit if he qualifies as opposed to the measure. See *Deschler's Procedure*, Ch 23 § 11. It is not too late for a senior member of the committee to seek recognition where another minority member has qualified as opposed to the bill but where his motion has not yet been read by the Clerk. 96–1, Apr. 24, 1979, p 8360.

Recognition for Amendments to Motion

If the previous question is voted down on a motion to recommit, the person offering an amendment to the motion would not necessarily have to qualify as being opposed to the bill. 90–2, June 26, 1968, p 18940. A Member who in the Speaker's determination lead the opposition to the previous question on the motion to recommit, such as the chairman of the committee reporting the bill, is entitled to offer an amendment to the motion regardless of party affiliation. 97–1, June 26, 1981, pp 14791–93.

§ 15. Debate on Motion

Generally

The straight motion to recommit is not debatable where made pending the previous question on the measure or after the previous question has been ordered. 5 Hinds § 5582; 7 Deschler Ch 23 § 25. Under Rule XVI clause 4 the motion to recommit after the previous question is ordered on final passage is rendered debatable only by unanimous consent (99–1, Dec. 4, 1985, p 34160) or by the inclusion of instructions in the motion (102–2, Feb. 27, 1992, p ____). Under that rule, a motion to recommit with instructions is debatable for 10 minutes, five minutes in favor of the motion and five op-

posed. *Manual* § 782; 92–1, June 2, 1971, pp 17491–95; 92–1, Sept. 30, 1971, pp 34345–47. In the 99th Congress the rule was amended to permit one hour of debate, rather than 10 minutes, upon demand of the majority floor manager of the bill, time to be equally divided. 99–1, Jan. 3, 1985, p 393.

Rule XVI clause 4 permits debate on a motion to recommit only where the underlying measure is a bill or joint resolution. 93–1, Nov. 15, 1973, pp 37141, 37151; 95–2, Oct. 13, 1978, p 37017. The debate permitted by the rule is inapplicable to a motion to recommit a concurrent resolution under Rule XVII clause 1. 94–1, May 7, 1975, pp 13366, 13367.

Control of Debate Time

The Member recognized for five minutes in support of his motion to recommit with instructions must use or yield back all of that time, and may not reserve a portion thereof. 97–1, June 26, 1981, p 14792. But the Member offering the motion may, at the conclusion of the 10 minutes of debate, yield to another Member to offer an amendment to the motion if the previous question has not been ordered on the motion. 93–1, July 19, 1973, pp 24966, 24967.

A Member recognized for five minutes in opposition to a motion to recommit with instructions controls the floor for debate only and may not yield to another Member to offer an amendment to the motion to recommit. 93–1, July 19, 1973, pp 24966, 24967. Where debate time on a motion to recommit with instructions has been lengthened by a special rule, the Chair has allowed time to be allocated and controlled and has permitted the Member controlling time in opposition to close debate. 95–2, Aug. 10, 1978, p 25500.

§ 16. Effect of Special Rules

The Committee on Rules is precluded from reporting a special order which would prevent the motion to recommit from being made as provided in Rule XVI clause 4. Such special orders are precluded by Rule XI clause 4(b). *Manual* §§ 729a, 729c. Clause 4(b) was amended in the 104th Congress to further prohibit the Committee on Rules from denying the Minority Leader or his designee the right to include proper amendatory instructions in a motion to recommit (§ 210, H. Res. 6, 104–1, Jan. 4, 1995, p ____).

The rule prohibiting special orders that preclude the motion to recommit under Rule XVI clause 4 is applicable only to the recommittal of bills and joint resolutions, and does not apply to special orders restricting the recommittal of simple or concurrent resolutions. See 100–2, May 4, 1988, p 9865.

F. Motions With Instructions

§ 17. In General

The motion to refer, commit, or recommit may include instructions. Such instructions may direct the designated committee(s) to take specified actions (7 Deschler Ch 23 § 25), such as to study a subject germane to the underlying measure. 101–2, Mar. 29, 1990, p ____. The committee may be instructed:

- To report ''forthwith'' with an amendment. § 18, infra.
- To report the bill back promptly with certain amendments. 102–1, Oct. 29, 1991, p ____; 102–2, June 25, 1992, p ____; 102–2, July 31, 1992, p ____.
- To consider the bill in relation to the President's energy message and to promptly hold hearings thereon. 95–1, Apr. 29, 1977, p 12886.
- To hold hearings and promptly report recommendations on how to amortize the cost of the bill. 101–2, Mar. 29, 1990, p ____.
- To hold hearings on a proposal and to solicit the views of the Attorney General. 89–2, Aug. 22, 1966, p 20119.
- To examine the sufficiency of a contempt citation and report back to the House. 89–2, Oct. 18, 1966, p 27484.

Amendments to Instructions

A motion to recommit with instructions may be amended if the previous question has not been ordered thereon. Indeed, a substitute amendment which strikes out all of the proposed instructions and inserts others in their place is in order if germane to the pending measure, and does not violate the right of the minority to move to recommit. 8 Cannon § 2759. An amendment offered to an instruction must be germane to the bill, not necessarily to the original instruction. See *Manual* § 796.

§ 18. Instructions to Report ''Forthwith''

The House may recommit a bill to committee with instructions to report it back ''forthwith'' with an amendment. 87–2, Oct. 3, 1962, p 21897; 88–1, Dec. 16, 1963, pp 24757–59; 89–2, June 1, 1966, p 11905. Such instructions must be complied with immediately. 87–1, Sept. 13, 1961, p 19208. The House has used this procedure even with respect to an amendment in the nature of a substitute for the entire bill. 92–2, Feb. 9, 1972, pp 3451–53.

Having been instructed to report ''forthwith,'' the committee is not required to convene and consider the measure. The chairman or other designated committee member immediately rises and announces that pursuant

to the instructions of the House, he is reporting the measure back to the House with the instructed amendment. 7 Deschler Ch 23 § 25. The House then votes on the amendment and, if agreed to, again on engrossment and third reading of the bill prior to final passage, as shown in the illustrative proceedings below. 101–1, June 15, 1989, pp 12164, 12165.

THE SPEAKER: The question is on the engrossment and third reading of the bill.

Note: The question is then put. If the motion carries, the bill is ordered to be engrossed and read a third time, and is read the third time.

MEMBER: I offer a motion to recommit.

THE SPEAKER: Is the gentleman opposed to the bill?

MEMBER: I am, Mr. Speaker.

THE SPEAKER: The gentleman qualifies. The Clerk will report the motion to recommit.

THE CLERK: MR. _____ of _____ moves to recommit the bill, H.R. ____, to the Committee on _____ with instructions to report the bill forthwith with the following amendment: _____

Note: The motion is subject to 10 minutes of debate or up to one hour if demanded by the floor manager of the bill. § 15, supra.

THE SPEAKER: Without objection, the previous question is ordered. . . . The question is on the motion to recommit.

Note: A vote having been taken and announced in the affirmative, the chairman of the designated committee rises:

THE CHAIRMAN: Mr. Speaker, pursuant to the instructions of the House on the motion to recommit I report back the bill, H.R. _____, with an amendment [*the amendment is read in the House by the Clerk*].

THE SPEAKER: The question is on the amendment.

Note: The amendment is voted on; if agreed to, the Speaker puts the question on engrossment and third reading of the bill; if agreed to, the question is on passage of the bill.

§ 19. Dividing the Question on Instructions

On a motion to recommit with instructions it is not in order to demand a separate vote on the instructions or various branches thereof. 5 Hinds §§ 6134–6137; 8 Cannon §§ 2737, 3170. However, when a bill is reported back to the House with one or more amendments pursuant to such instructions, a division of the question may be demanded on the amendment(s) if otherwise in a divisible form. See 103–1, Jan. 5, 1993, p ____. Generally, see DIVISION OF THE QUESTION FOR VOTING.

§ 20. Instructions Subject to a Point of Order

A motion to recommit may not propose to do that which may not be done by amendment under the rules of the House. 5 Hinds §§ 5529–5541; 101–1, Aug. 1, 1989, p 17156. It is not in order to do indirectly—by instructions to report a particular amendment—that which may not be done directly by way of amendment. 98–1, Sept. 19, 1983, p 24646. A point of order will lie, for example, if the motion proposes an amendment that is not germane to the bill. 102–2, Sept. 23, 1992, p ____. So too, if any portion of a motion to recommit with instructions constitutes ''legislation on a general appropriation bill,'' the entire motion is out of order. 94–2, Sept. 1, 1976, p 20884. Also, when a motion to recommit a general appropriation bill is offered which includes a ''limitation'' not considered in Committee of the Whole, it is subject to a point of order under Rule XXI clause 2(c). 101–1, Aug. 1, 1989, pp 17156–60. Instructions that require the reporting of an amendment that is contrary to a special order from the Rules Committee may also be ruled out. 7 Deschler Ch 23 § 25.

A motion to recommit may not include instructions to modify any part of an amendment previously agreed to by the House. 8 Cannon §§ 2712, 2715, 2720. Thus, where the House has adopted an amendment in the nature of a substitute, that text cannot be further amended by way of a motion to recommit absent a special rule permitting amendatory instructions. 86–2, May 4, 1960, p 9416; 89–1, Sept. 29, 1965, p 25438. If the special order reported form the Rules Committee permits a motion to recomit ''with or without instructions,'' amendatory instructions are protected, even if a substitute is adopted during the amendment process.

In the 104th Congress, the authority of the Committee on Rules to report special orders which deny a recommittal motion with instructions was circumscribed. The current rule specifies that the commitee may not report a special rule denying to the Minority Leader or his designee the right to offer a motion with germane instructions. Rule XI clause 4(b). *Manual* § 729a. Since this change, the insertion of the phrase ''one motion to recommit *with or without instructions*'' has become routine in special orders reported by the Committee on Rules.

A motion to recommit a bill to a committee with instructions that the bill be reported back forthwith with specified amendments is not in order if the adoption of the amendments would violate section 311(a) of the Congressional Budget Act by causing revenues to fall below the floor specified in the applicable concurrent resolution on the budget. 98–1, Apr. 20, 1983, p 9151.

The Chair does not anticipate the content of a motion to recommit and will not rule in advance as to whether particular instructions which might be offered as part of such a motion would be in order. 91–1, Dec. 10, 1969, pp 38123, 38130; 97–2, Aug. 13, 1982, p 20978.

Resolutions of Inquiry

Research References

3 Hinds §§ 1856–1910
6 Cannon §§ 404–437
4 Deschler Ch 15 § 2
Manual §§ 855–859

§ 1. In General

Resolutions of inquiry are one of the methods used by the House to obtain information from the executive branch. Deschler Ch 15 § 2. They are accorded privileged status under Rule XXII clause 5. *Manual* § 855.

Resolutions of inquiry are simple rather than concurrent or joint in form. See for example 102–1, Feb. 29, 1991, p ____. The resolution normally provides that the information be furnished directly to the House; however, a resolution merely authorizing a committee to request information has been treated as a resolution of inquiry (3 Hinds § 1860), and in one instance the resolution directed the officer named to furnish information to a committee rather than to the House. Deschler Ch 15 § 2.26.

A resolution of inquiry need not contain a statement as to the purpose for which the information is sought. See 96–1, June 15, 1979, p 15027. And the inclusion of a preamble will effectively destroy the privilege which the resolution might otherwise enjoy. See § 6, infra.

The wording of the resolution will vary depending on the person to whom the resolution is directed. The House traditionally ''requests'' the President and ''directs'' the heads of executive departments to furnish information. *Manual* § 856. And the resolution may include the qualifying phrase, ''if not incompatible with the public interest,'' or words to that effect. 3 Hinds § 1899; 6 Cannon § 436; Deschler Ch 15 § 2.8.

§ 2. To Whom Resolutions May Be Directed

Resolutions of inquiry have been traditionally directed to the President (96–2, Apr. 23, 1980, p 8800) or to the Secretary of State or other Cabinet officer. Deschler Ch 15 § 2. The House rule dealing with resolutions of inquiry refers to ''heads of executive departments'' (Rule XXII clause 5), but the term ''heads of executive departments'' does not extend beyond Cabinet officers to lesser officials. Thus, a resolution of inquiry directed to the Federal Reserve Board (6 Cannon § 406) or to the Director of the CIA (Deschler Ch 15 § 2.1) would not be privileged for consideration.

§ 3. Subjects of Inquiry

A wide variety of information—relating to both foreign and domestic affairs—may be sought pursuant to a resolution of inquiry. The House has agreed to such resolutions to obtain information on:

- Agreements between the President and the British Prime Minister. Deschler Ch 15 § 2.1.
- The relationship between the President's brother (Billy Carter) and the Libyan Government. 96–2, Sept. 10, 1980, pp 24948 *et seq.*
- The dismantlement and removal of industrial plants from postwar Germany. Deschler Ch 15 § 2.15.
- Sales to foreign countries of goods in short supply. Deschler Ch 15 § 2.22.
- Domestic availability of petroleum and coal. Deschler Ch 15 § 2.23.
- The construction of certain river improvements and the costs thereof. 3 Hinds § 1875.
- School systems receiving federal funds and engaging in busing to achieve racial balance. Deschler Ch 15 § 2.24.

Documents which may be sought pursuant to a resolution of inquiry include reports on foreign affairs such as the so-called Pentagon Papers (Deschler Ch 15 § 2.2), certain communications between the Department of State and a U.S. Embassy (Deschler Ch 15 § 2.3), maps showing certain military operations (Deschler Ch 15 § 2.8), military statistical data (Deschler Ch 15 § 2.11), papers in the custody of the Special Prosecutor (Deschler Ch 15 § 2.17), and a letter from the Director of the FBI to the Secretary of Commerce (Deschler Ch 15 § 2.20). In 1993, a resolution of inquiry, reported adversely, requested the President to furnish certain documents concerning the White House travel office and the FBI. 103–1, July 20, 1993, p ____.

§ 4. Committee Functions

Referrals and Reports; Joint Referrals

Resolutions of inquiry are referred to the appropriate committee for consideration and report. Joint referrals to two [or more] committees may be made in a proper case. 96–2, Sept. 10, 1980, pp 24948 *et seq.* By House rule (Rule XXII clause 5), committees are required to report resolutions of inquiry back to the House within 14 legislative days (formerly seven legislative days), exclusive of the first or last day (3 Hinds §§ 1858, 1859). The 14-day reporting period, which was adopted in 1983 (*Manual* § 855), may be extended by unanimous consent. 97–2, July 12, 1982, p 15773. In the case of a joint referral, both must either report or be discharged before consideration.

Discharge

If the committee fails to report the resolution back to the House within the 14-day period, the House may reach the resolution by a motion to discharge (*Manual* § 858), as follows:

> MEMBER: Mr. Speaker, I move to discharge the Committee on _____ from the further consideration of the resolution, H. Res. ____, a privileged resolution of inquiry.

This motion is privileged for consideration (97–2, July 12, 1982, p 15773) after the 14-day period even though there may have been some delay in the transmittal of the resolution to the committee (3 Hinds § 1871). The motion to discharge is not debatable (*Manual* § 858), and a motion to table the motion to discharge is in order. That motion to table is likewise not debatable. 6 Cannon § 415. But if the motion to discharge is agreed to, the question recurs on agreeing to the resolution of inquiry, and that question is debatable. 6 Cannon § 417.

A committee may also be discharged from consideration of a resolution of inquiry by unanimous consent. 93–1, Oct. 13, 1973, p 33687; 93–1, Nov. 1, 1973, p 35644. The unanimous-consent procedure may be used where a motion to discharge is not yet eligible for consideration under Rule XXII clause 5. 96–1, Sept. 13, 1979, p 24423.

§ 5. Consideration in the House

Generally; Calling Up

A resolution of inquiry, if in proper form, is privileged (§ 6, infra), and a report thereon is presented from the floor rather than through the hopper. 103–1, July 20, 1993, p ____. Subject to three-day report availability (Rule

XI clause 2), the resolution may be called up in the House and considered at anytime after it has been reported by (or discharged from) the committee to which it was referred. 6 Cannon § 414. It may not be called up as privileged before being referred to committee. *Manual* § 857. It is privileged for consideration on ''suspension days'' and took precedence over the former Consent Calendar. 6 Cannon § 409. The privilege of the resolution is not affected by an adverse report on it by the committee. 6 Cannon §§ 404, 410. Indeed, an adverse report on the resolution is itself reported as privileged. 92–2, Apr. 19, 1972, p 13497; 96–2, Feb. 20, 1980, p 3338.

The reported resolution retains its privilege after being referred to the Calendar. 6 Cannon § 407. If ruled out because submitted through the hopper, it may be immediately resubmitted from the floor without loss of privilege. 6 Cannon § 419.

Who May Call Up

Normally, when a resolution of inquiry has been reported by committee within the 14-day time frame (§ 4, supra), only an authorized member of that committee may call up the resolution for consideration. 6 Cannon § 413. By reporting a resolution of inquiry, even adversely, within 14 legislative days, the committee of jurisdiction retains control of the resolution, and a Member not authorized by the committee cannot call up the resolution. 8 Cannon § 2310. Where the resolution has been referred to two committees, but neither reports, the resolution could be discharged by majority vote and called up by an individual Member. If one committee reports, the other committee could be discharged by motion, but only the reporting committee could call it up; if both committees report, the resolution could be called up by direction of one or both of the committees.

Three-day Availability Requirement

The consideration of a resolution of inquiry in the House is ordinarily subject to the three-day availability requirements of the House rules (*Manual* § 715), but the House has considered it on the day reported where no point of order was raised thereto (92–1, June 30, 1971, p 23030), or pursuant to a unanimous-consent request (93–1, May 9, 1973, pp 14990–94).

Debate; Motions

The Member calling up a privileged resolution of inquiry reported from committee is recognized to control one hour of debate. 92–1, July 7, 1971, pp 23807–10; 92–1, Oct. 20, 1971, pp 37055–57. Debate is under the hour rule whether the resolution is reported from committee (96–1, June 14,

1979, p 14951), or is before the House pursuant to a motion to discharge (94–1, Sept. 29, 1975, p 30748).

A motion to table will lie against a pending resolution of inquiry, whether reported favorably (96–2, Sept. 10, 1980, pp 24948 *et seq.*), or adversely (92–1, Sept. 30, 1971, p 34266; 92–2, Aug. 16, 1972, p 28365). The motion to table is preferential (92–1, June 30, 1971, p 23030); it is in order during debate on the resolution (92–1, July 7, 1971, pp 23807–10; 92–1, Oct. 20, 1971, pp 37055–57) if made by the manager of the resolution (96–2, Sept. 10, 1980, p 24960) or by another Member if not taking the manager from his feet.

Effect of Adjournment

A resolution of inquiry undisposed of by the House at adjournment at the end of the day retains its privilege and is the unfinished business when that class of business is again in order under the rules. 6 Cannon § 412. On that day, the resolution is again called up and may be debated *de novo*. 96–1, June 14, 1979, p 14951; 96–1, June 15, 1979, p 15027.

§ 6. Privilege of Resolution

For a resolution of inquiry to have a privileged status, or for the motion to discharge to have that status, the resolution must be addressed to the President (3 Hinds § 1854) or to a member of his Cabinet (6 Cannon § 406). To be privileged, the resolution should not present a preamble (3 Hinds §§ 1877, 1878; 6 Cannon §§ 422, 427). It must seek facts rather than opinions (§ 7, infra), and must not require an investigation (3 Hinds §§ 1872–1874; 6 Cannon §§ 427, 429, 432; 93–1, Mar. 6, 1973, pp 6383–85). A resolution may be held to require an investigation where it calls for information which is not within the purview of the executive to whom the resolution is addressed. 3 Hinds § 1874; 6 Cannon § 410. The point of order that a resolution of inquiry is not privileged should be raised after the resolution has been read but before debate thereon. 72–1, Feb. 5, 1932, p 3453.

§ 7. — Resolutions Calling for Opinions

A resolution of inquiry, to enjoy privileged status, should seek factual information only; it may not be considered as privileged where it calls for an opinion (3 Hinds §§ 1872, 1873; 6 Cannon § 413; Deschler Ch 15 § 2; 93–1, Mar. 6, 1973, pp 6383–85), or for such facts as would inevitably require the statement of an opinion to answer the inquiry (69–1, Feb. 11, 1926, p 3805). A request for documents only is normally construed not to require an expression of opinion.

Resolutions of inquiry have been called up as privileged where they have sought:

- Information in possession of the Department of Justice relative to a certain kidnapping case, including the names of those questioned in the investigation. 74–1, May 16, 1935, p 7687.
- Documents containing a list of public school systems receiving federal aid which bus school children to achieve racial balance or indicating the use of federal funds for such busing. 92–1, Aug. 2, 1971, pp 28863–69.
- Defense Department documents regarding U.S. military assistance to certain nations. 92–1, Aug. 3, 1971, p 29060–64.
- Information from the Secretary of State regarding a U.S. military alert ordered in October, 1973. 93–2, Apr. 9, 1974, p 10177.
- Information from the Secretary of Defense relative to congressional support for the C-5B aircraft. 97–2, Aug. 3, 1982, p 18947.
- Information from the President relative to U.S. activities in Honduras and Nicaragua. 98–1, May 4, 1983, p 11097.
- Information from the President relating to U.S. supplies of crude oil and refined petroleum products. 96–1, June 14, 1979, p 14951.
- Evidence compiled by the Department of Justice and the FBI in connection with the ABSCAM investigation (relating to bribery of certain Members and other public officials), and information on the amount of federal spending thereon. 96–2, Feb. 27, 1980, pp 4071, 4078.

Resolutions of inquiry have lost their privileged status because they sought opinions rather than facts where they called for:

- The names of those certifying to an appointment unless the disclosure would be ''distressing'' to anyone named. 72–1, Feb. 5, 1932, p 3453.
- An ''analyses'' of a country's past and present military capability. 92–1, July 7, 1971, p 23816.
- The rationale for American involvement in South Vietnam. Deschler Ch 15 § 2.1.
- The extent of damage to facilities struck by bombs. 93–1, Mar. 6, 1973, pp 6383–85.

§ 8. Executive Branch Responses

Resolutions of inquiry have ordinarily been complied with pursuant to principles of comity between the branches of government. Deschler Ch 15 §§ 2, 3. Responses submitted to the House by the officer named in the resolution are laid before the House and referred to the committee or committees reporting the resolution. 96–2, Sept. 17, 1980, p 25887.

The House rules contain no specific provision for enforcing resolutions of inquiry and there have been a number of instances in which the officer named has refused or declined to provide some or all of the information sought. See, for example, 6 Cannon §§ 434, 435. In such cases the House

may renew its inquiry (3 Hinds § 1890) or demand a further or more complete answer (3 Hinds § 1891; 6 Cannon § 435). As to the power of the House to issue subpenas and to enforce them pursuant to contempt procedures, see CONTEMPT POWER.

Rules and Precedents of the House

Research References
8 Cannon §§ 3376–3396
1 Deschler, Preface, Ch 5 §§ 1–7
Manual §§ 59, 60, 283–286, 387, 388, 686a
U.S. Const. art. I § 5

§ 1. In General

Adoption of Rules

The Constitution empowers each House to determine its rules of proceedings. U.S. Const. art. I § 5. The House may not by its rules ignore constitutional restraints or violate fundamental rights, and there should be a reasonable relation between the mode or method of proceeding established by the rule and the result which is sought to be obtained. But within these limitations, the House is free to adopt such rules as it sees fit. *Yellin* v *United States*, 374 U.S. 109 (1963).

It is customary for the House at the beginning of each Congress to adopt the rules by which it is to be governed during its meetings. In so doing, the House will ordinarily adopt the rules applicable in the previous Congress with such amendments as it considers necessary. 86–1, Jan. 27, 1959, p 1209; 88–1, Jan. 9, 1963, pp 14, 20; 99–1, Jan. 3, 1985, pp 393 *et seq.* Such rules are adopted or amended pursuant to a simple resolution which is called up as privileged. 103–1, Jan. 5, 1993. See also 87–1, Sept. 22, 1961, p 20823; 88–1, Jan. 9, 1963, pp 14, 20; 93–1, Mar. 7, 1973, pp 6713–20; 99–1, Jan. 3, 1985, p 393. Generally, see ASSEMBLY OF CONGRESS. Changes in the rules from the prior Congress normally emanate from the conference or caucus of the party which commands a majority and thus has the responsibility for organizing the House.

Even before adoption of rules, it is in order to consider, as privileged, a resolution in the nature of a special order which makes in order the subsequent consideration of a resolution adopting the rules for the newly organized House. See 104–1, Jan. 4, 1995, p ____. See also 5 Hinds' 5450.

When a member of the majority party offers a resolution providing rules for the new Congress:

- The resolution is debatable for one hour.
- The resolution is not subject to amendment unless the previous question is rejected or the manager of the resolution yields for an amendment (Deschler Ch 1 § 10.9).
- A motion to refer (with instructions) is in order before debate begins, but this motion is subject to being laid on the table. 103–1, Jan. 5, 1993, p ____.
- A motion to commit is in order pending or following the ordering of the previous question. 5 Hinds § 5604; 102–1, Jan. 3, 1991, p ____; 104–1, Jan. 4, 1995, p ____.
- A majority vote is required to pass a resolution adopting rules for a new Congress.

The right of the House to determine the rules of its proceedings may not be impaired by repetition of dilatory motions. 5 Hinds § 5707.

Publication

The standing rules of the House are published each Congress in the *House Rules and Manual* pursuant to resolution. See for example H. Res. 580, Oct. 7, 1994. This comprehensive volume also includes, among other pertinent material, Jefferson's Manual, which was prepared by Thomas Jefferson for his own guidance as President of the Senate from 1797 to 1801. These provisions still govern the proceedings of the House where applicable and not inconsistent with the standing rules and orders of the House. Rule XLII. *Manual* § 938.

Statutory Rules and Joint Rules

In some cases, Congress has enacted statutes setting forth rules and procedures to be followed in the House in considering certain kinds of legislation. A noteworthy example is the Congressional Budget and Impoundment Control Act of 1974. Such statutes are enacted as an exercise of the rule-making power of Congress, are reincorporated by reference in the preface of the resolution adopting the rules as a part of the rules of each House, and are carried in the *House Rules and Manual*. § 1013. Deschler Ch 5 § 3.

Joint rules, although in common use until 1876, are rarely used today. For a recent example, see 91–1, Jan. 3, 1969, p 36, relating to the count of electoral votes.

Rules Based on Precedent or Custom

As Asher Hinds noted in his work on the precedents of the House, much of what is known as parliamentary law is not part of the formal writ-

ten rules of the House, but springs from precedent or long-standing custom. 1 Hinds p iii. Such precedent may be invoked to resolve a procedural question in the absence of an express written rule on the subject. Deschler Ch 5 § 3. See also 1 Deschler, Preface, pp. iii–xiv. More frequently the precedents of the House are used to show the scope and application of one of its formal rules. A noteworthy example is the House germaneness rule, which is set forth in less than a sentence in Rule XVI clause 7, yet has been interpreted through thousands of precedents since its adoption in 1789. See *Manual* §§ 794–800; Deschler-Brown Ch 28.

The precedents of the House, which are based primarily on the rulings of the Speaker or Chairman of the Committee of the Whole, are compiled in *Hinds' Precedents* (1907), *Cannon's Precedents* (1936), *Deschler's Precedents* (1977) and *Deschler-Brown Precedents*. Such compilations have been authorized by law (70 Stat. 270; 88 Stat. 1777).

§ 2. Binding Effect

Parliamentary law—a term that encompasses both formal rules and usages—has come to be recognized as binding on the assembly and its members except as it may be varied by the adoption by the membership of special rules or through some other authorized procedural device. *Landes* v *State ex rel Matson*, 160 Ind. 479, 67 NE 189.

On the theory that a government of laws is preferable to a government of men, the House has repeatedly recognized the importance of following its precedents and obeying its well-established procedural rules. See, for example, 2 Hinds § 1317. The House adheres to settled rulings, and will not lightly disturb procedures which have been established by prior decision of the Chair. 1 Deschler p vi. Of course, the Speaker is not required to follow precedents blindly or mindlessly; the Speaker or Chairman may refuse to follow a precedent even though it is relevant to a pending question, where it is the only precedent on the point, and was not carefully reasoned. 6 Cannon § 48.

§ 3. Construction

It is the duty of the Chair, when a timely point of order is raised, to determine whether language in a pending bill or amendment conforms to the rules of the House, although the Chair may properly decline to do so where points of order against the provisions have been waived by special rule. 93–1, May 10, 1973, pp 15290, 15291. In construing a rule, the Speaker may look beyond its terms and consider all the facts and circumstances in order to determine the intention of the House in adopting the rule. Deschler Ch

5 § 6.3. In construing the rules, the Chair may be guided by the general principle that the object of a parliamentary body is action, and not stoppage of action. 92–2, Oct. 3, 1972, p 33503.

The absence of a formal rule governing a particular procedure does not necessarily mean that the procedure is permitted. Indeed, acts or proceedings not expressly authorized by the rules may be deemed inconsistent with, or in violation of, the rules. Deschler Ch 5 § 6.4.

Where two rules of the House are in conflict, the last one adopted controls. Deschler Ch 5 § 6.1. Similarly, where the rules of the House and a subsequent legislative enactment are not consistent, the enactment must prevail. 87–1, Sept. 5, 1961, p 18133. By the same token, a rule adopted after an enactment may supersede those provisions of the statute which would otherwise govern House procedure. Deschler Ch 5 § 6.

§ 4. Changing or Waiving Rules

Generally

Pursuant to its authority under the Constitution (art. I § 5) the House may change or waive the rules governing its proceedings, and this is so even with respect to rules enacted by statute (94–1, Mar. 20, 1975, p 7677; 95–1, Nov. 1, 1977, pp 36310, 36311). Once the rules have been adopted at the convening of the House in a new Congress, further amendments to the rules are generally implemented by resolution. And a rule may in effect be suspended or modified through the use of certain procedural devices, such as a unanimous-consent request. Deschler Ch 5 § 5.

A motion to amend the rules of the House does not present a question of ''constitutional'' privilege. 8 Cannon § 3377. And a question of the privileges of the House may not be invoked to effect a change in the rules of the House or their interpretation. 100–2, Sept. 9, 1988, p 23298; 102–2, July 30, 1992, p ____. Generally, see QUESTIONS OF PRIVILEGE.

The effect of a proposed change in the rules is a matter for debate and not within the jurisdiction of the Chair to decide on a parliamentary inquiry during its pendency. 90–1, Apr. 25, 1967, pp 10708–12.

For the motion to suspend the rules, see SUSPENSION OF RULES.

By Resolution

Amendments to the rules are generally offered in the form of a privileged resolution reported and called up by the Committee on Rules. Such a resolution may not be amended unless the Member in charge yields for that purpose or the previous question is voted down. Deschler Ch 5 § 5.8. The resolution may be considered in the Committee of the Whole, pursuant

to the terms of a special order reported from the Committee on Rules. Deschler Ch 5 § 5.6.

Although a resolution from the Committee on Rules to amend a House rule is privileged (Deschler Ch 5 § 5.1), a resolution offered from the floor to amend a House rule is not privileged for consideration as against a demand that business proceed in the regular order (8 Cannon § 3377).

The discharge rule (Rule XXVII clause 3) has also been used to bring a proposed rules change before the House. 103–1, Sept. 28, 1993, p ____.

By Unanimous Consent

Minor changes in the standing rules are frequently considered by unanimous consent. Deschler Ch 5 § 5.2. And the House may by unanimous consent waive the requirements of a particular rule unless the rule itself provides that it is not subject to waiver even by unanimous consent. 91–2, July 29, 1970, p 24619.

By Special Order

The House has the power to adopt a special rule from the Committee on Rules which has the effect of setting aside the standing rules of the House insofar as they impede the consideration of a particular bill. 90–1, Nov. 28, 1967, p 34038. The special rule may waive one or more—or indeed all—points of order against a particular bill. For example, the special order may waive points of order that could otherwise be raised against legislative provisions in an appropriation bill, points of order based on the germaneness requirement, or points of order based on the Ramseyer rule. Deschler Ch 5 § 7. For a full discussion of special orders, see SPECIAL RULES.

Senate Bills; Amendments Between the Houses

I. Disposition of Senate Bills on the Speaker's Table

II. Senate Amendments

A. Before the Stage of Disagreement

B. Reaching the Stage of Disagreement

C. After the Stage of Disagreement; Motions

III. House Amendments to Senate Measures

Research References

4 Hinds §§ 3090, 3108–3110
5 Hinds §§ 4795–4808, 6163–6253, 6308, 6310, 6324
6 Cannon § 730
7 Cannon §§ 799, 819, 825
8 Cannon §§ 3177–3208, 3211
Manual §§ 485–488, 519, 522–529, 797, 828, 882, 883, 913

I. Disposition of Senate Bills on the Speaker's Table

§ 1. In General

The House and Senate must agree on every detail of a bill before it can be enrolled and presented to the President. See U.S. Const. art. 1 § 7. Even the most magnificant phrase of the Senate text must receive the concurrence of the House. 5 Hinds § 6233.

Senate bills and joint resolutions messaged from the Senate to the House go to the Speaker's table for disposition pursuant to Rule XXIV clause 2. Under this rule many Senate bills are referred by the Speaker to the appropriate standing committees in the same manner as public bills introduced by the Members. *Manual* §§ 882, 883. However, Senate bills not requiring consideration in the Committee of the Whole, and which are ''substantially the same'' as House bills which have been reported by a standing committee, and on the House Calendar, may be ''at once disposed of'' in the House on motion authorized by that committee. Rule XXIV clause 2. (See § 2, infra.) Senate bills that do not satisfy the conditions specified by that rule may be called up pursuant to a unanimous-consent request or a special order from the Committee on Rules (§§ 3, 4, infra), but not by motion (95–2, Feb. 23, 1978, p 4480). Simple resolutions of the Senate that do not require House action are not referred. 7 Cannon § 1048.

§ 2. By Motion

Generally

A Senate bill, received in the House after a House bill ''substantially the same'' has been reported favorably and placed on the House Calendar, is privileged, and may be called up from the Speaker's table for consideration on motion directed by the committee having jurisdiction of the House bill. 6 Cannon §§ 727, 734. This motion is specifically authorized by Rule XXIV clause 2 (*Manual* § 882), which applies to both private and public Senate bills (4 Hinds § 3101), and to concurrent resolutions as well (4 Hinds § 3097). The fact that a House bill substantially the same as the Senate bill has already passed the House and gone to the Senate does not detract from the privilege of the Senate bill under the rule. 6 Cannon § 734.

The motion to call up the Senate bill is not subject to the question of consideration (8 Cannon § 2443) and is not voted on, but is subject to a point of order if the conditions specified by the rule are not satisfied. The prerequisites of the rule are:

- The Senate bill must be substantially the same as the House bill. 4 Hinds §§ 3098, 3099, 3107–3111; 6 Cannon § 737.
- The Senate bill must not require consideration in the Committee of the Whole. 8 Cannon § 3101.
- The Senate bill must come to the House after and not before (6 Cannon § 738) the House bill is placed on the calendar. 4 Hinds § 3096.
- The House bill must be correctly on the House Calendar (not the Union Calendar). 4 Hinds §§ 3089, 3097.
- The House committee reporting the House bill must authorize the calling up of the Senate bill from the Speaker's table. 6 Cannon § 739.

In determining whether the House bill is substantially the same as the Senate bill, amendments recommended by the House committee must be considered. 6 Cannon §§ 734, 736. Although a committee must authorize the calling up of the Senate bill (6 Hinds § 739), the actual motion need not be made by a member of the committee (4 Hinds § 3100). The authority of a committee to call up a bill must be given at a formal meeting of the committee. 8 Cannon § 2211, 2212.

Form

The Member authorized by the committee to call up the Senate bill rises and addresses the Chair:

> MEMBER: Mr. Speaker, by direction of the Committee on _____, I call up from the Speaker's table Senate bill S. ____, a bill of similar tenor, H.R. ____, having been reported and placed on the House Calendar.

SPEAKER: The gentleman calls up from the Speaker's table the bill S. ____, which the Clerk will report.

Floor Consideration

Senate bills when called up under this procedure are considered under the regular rules of the House, the Member in charge being recognized for one hour (see 6 Cannon § 738):

- The bill is read in full.
- The Member in charge uses or allots the hour to which he is entitled.
- Any Member having the floor by right during debate may offer amendments.
- At the expiration of the first hour if the previous question is not moved another Member may be recognized for an hour.

§ 3. By Unanimous Consent

A Senate measure—a bill or joint or concurrent resolution—may be taken from the Speaker's table and called up for consideration in the House by unanimous consent. 94–1, Apr. 9, 1975, p 9520; 92–1, Sept. 28, 1971, p 33715; 88–2, Jan. 8, 1964, p 145. Consideration in the House by unanimous consent is permitted even where the Senate measure would ordinarily require consideration in the Committee of the Whole. 95–2, Feb. 23, 1978, p 4480.

Normally, a unanimous-consent request to consider a Senate bill on the Speaker's table merely involves consideration of a bill in the House under the hour rule, and does not include the pendency of any particular amendment as part of the request. However, a unanimous-consent request to consider the Senate bill may include a provision that a specified amendment be considered as pending. 97–2, Oct. 1, 1982, pp 27362, 27365–68. The House may also agree to a unanimous-consent request to take a Senate bill from the Speaker's table and to move to strike out all after the enacting clause and insert in lieu thereof certain text. 94–2, Aug. 31, 1976, pp 28463, 28464.

§ 4. By Special Rule

The House may adopt a special rule (a resolution reported from the Committee on Rules) which provides that a Senate bill be taken from the Speaker's table for consideration in the House. 94–1, Nov. 14, 1975, p 36638. Thus, a Senate bill at the Speaker's table which requires consideration in the Committee of the Whole may be called up for consideration in the House pursuant to a special rule. 95–2, Feb. 23, 1978, p 4480.

A special rule permitting consideration of a Senate bill from the Speaker's table in the House may preclude intervening motions (except for the motion to recommit protected by Rule XVI clause 4) or make in order an amendment with the previous question considered as ordered on the amendment. 98–2, Aug. 8, 1984, p 23049. In one instance, where the Senate had passed a bill dealing with two subjects and the House had then passed separate bills on each subject, the House by a special rule amended the Senate bill with the combined texts of both House-passed bills. 93–2, Aug. 21, 1974, p 29654.

§ 5. Referral to Committee

Senate bills may be referred to committees in the same manner as public bills originating in the House. If not disposed of by special rule or other House order, Senate bills on the Speaker's table may be referred to appropriate committee(s) by the Speaker unless qualified for consideration ''at once'' under Rule XXIV clause 2 (*Manual* § 882). 6 Cannon § 727. Simple resolutions from the Senate that do not require any action by the House are not referred. 7 Cannon § 1048. Referral of House bills with Senate amendments, see § 7, infra.

§ 6. — Speaker's Discretion

The Speaker has the discretion to refer Senate bills on the Speaker's table to standing committees under any conditions permitted by clause 5 of Rule X. See § 7, infra. While it is the practice to refer promptly bills messaged from the Senate, it has been held that the rule requiring reference is merely directory and not mandatory and that the length of time such bills may remain on the Speaker's table before being referred is within the Speaker's discretion. 6 Cannon § 727.

II. Senate Amendments
A. Before the Stage of Disagreement

§ 7. In General; Referral to Standing Committees

Referrals By the Speaker

Senate amendments to House bills messaged from the Senate go to the Speaker's table, ultimately to be disposed of by unanimous consent, by special rule, or by motion. But before consideration of any motions to dispose of Senate amendments, the Speaker has the discretionary authority, under clause 2 of Rule XXIV (*Manual* § 882), to refer such amendments to the

appropriate committees, with or without a time limitation for committee consideration. See also *Manual* § 528b.

The Speaker's authority includes the discretion to refer a Senate amendment from the Speaker's table to one or more standing committees under any conditions permitted by clause 5 of Rule X for the referral of introduced bills. He may for example refer only a portion of the Senate amendment to the standing committee with subject-matter jurisdiction, without referring the remainder of the Senate amendment to the committee with jurisdiction over the original House bill. 97–1, Mar. 26, 1981, p 5397.

The Speaker's referral authority may also be invoked with respect to Senate amendments which remain undisposed of after House action. But he may permit the amendments to remain on the Speaker's table to await further action by the House. 91–2, June 17, 1970, pp 20159, 20198–200. Likewise, if objection is made to a unanimous-consent request to disagree to the amendments and agree to a conference, the Speaker is not required to send the bill and amendments directly to the legislative committee having jurisdiction thereof, but may hold the bill on the table until the Committee on Rules has an opportunity to act or until the House takes other action. 87–1, Mar. 29, 1961, p 5288; 87–1, Sept. 26 [Legislative Day, Sept. 25], 1961, p 21475.

Motions to Refer

A motion to refer a Senate amendment under debate may be initiated by a Member pursuant to Rule XVI clause 4 (*Manual* § 782). That motion takes precedence over the motions to agree, disagree or amend. 5 Hinds §§ 6172–6174. *Manual* § 528b. The motion to refer is in order even after the previous question has been ordered on a motion to agree to the Senate amendment. 5 Hinds § 5575.

Referrals By Special Rule

A Senate amendment may be referred to a standing committee pursuant to the terms of a special rule from the Committee on Rules. 87–1, Sept. 26, 1961, p 21475.

§ 8. Consideration in the House

House bills with Senate amendments which do not require consideration in a Committee of the Whole may be at once disposed of in the House as the House may determine. Rule XXIV clause 2 (*Manual* § 882). This rule is applied to Senate amendments to House amendments as well as Senate amendments to House bills. 86–2, Aug. 30, 1960, p 18357. The Senate amendments that may be directly called up under this rule are few in num-

ber, because the vast majority involve a charge against the Treasury and therefore require consideration in the Committee of the Whole. *Manual* § 528a.

§ 9. Consideration in Committee of the Whole

House bills with Senate amendments which require consideration in Committee of the Whole may not be called up in the House as privileged for immediate consideration. 6 Cannon § 731. The stage of disagreement not having been reached on Senate amendments requiring consideration in the Committee of the Whole, motions in the House to dispose of the amendments are not inherently privileged, the only exception being a motion to ask or agree to a conference under Rule XX clause 1. 95–1, Dec. 7, 1977, p 38721. See also 98–2, Oct. 11, 1984, p 32308; 4 Hinds §§ 3149, 3150; 8 Cannon §§ 3185, 3194. Reaching the stage of disagreement, see § 16, infra.

An amendment of the Senate to a House bill is subject to the point of order that it must first be considered in the Committee of the Whole if, originating in the House, it would be subject to that point. Rule XX clause 1. *Manual* § 827. The point of order permitted by this rule applies only before the stage of disagreement has been reached on the Senate amendment; it is too late to raise a point of order that Senate amendments should have been considered in Committee of the Whole after the House has disagreed thereto and the amendments have been reported from conference. 89–2, Oct. 20, 1966, pp 28240–45; 94–1, Dec. 4, 1975, p 38714.

Because of these restrictions against immediate consideration of Senate amendments in the House, it was at one time a common practice to refer such amendments to the appropriate standing committee(s). 6 Cannon § 731. After committee consideration, they were taken up in the Committee of the Whole. 4 Hinds §§ 3108–3110. Under the modern practice, most Senate amendments are disposed of by a special order reported form the Committee on Rules, or by unanimous consent under suspension. §§ 11–13, infra.

§ 10. Consideration by House Order

If the House agrees to a request to take up a Senate amendment at this stage, and if the request specifies the disposition sought—to concur, to amend,or to disagree—only that action is in order. Such a special request does not place the Senate amendment before the House for any alternative dispositions. If, on the other hand, a Senate amendment is placed before the House (by unanimous consent, a suspension motion, or a special rule) ''for consideration,'' then various actions relating to the amendment are possible.

The Senate amendment is under debate, and motions to concur with an amendment, to concur, or to disagree are all possibilities. A motion to concur with an amendment can itself be amended, if the previous question is rejected, to propose another amendment. Similarly, where the House has adopted a special rule providing for the consideration of a motion to concur in Senate amendments which require consideration in the Committee of the Whole, only the motion to concur, made in order by the special rule, is in order, and other motions to dispose of the Senate amendments may not be offered as privileged pending or even after rejection of that motion. The rejection of such a motion does not result in disagreement to that amendment or permit disposition of that amendment by other motions (the stage of disagreement not having been reached). 95–1, Dec. 7, 1977, p 38724.

§ 11. — By Special Rule

Generally

Resolutions from the Committee on Rules may be used to authorize the consideration of a motion to dispose of a Senate amendment prior to the stage of disagreement. 98–2, Oct. 11, 1984, p 32149; 99–1, Dec. 11, 1985, p 35989. Thus, the Committee on Rules may report out a special rule taking a House bill with Senate amendments (requiring consideration in the Committee of the Whole) from the Speaker's table and make in order the consideration of such amendments in the House. 95–1, Dec. 7, 1977, pp 38780–86. Illustrative rules from the Committee on Rules have provided for:

- The consideration of a motion to concur in a Senate amendment. 95–1, Dec. 7, 1977, p 38724.
- The consideration of a motion, if offered by the chairman of the committee with jurisdiction, to take a House-passed bill from the Speaker's table with a Senate amendment and to concur in the Senate amendment with an amendment. 98–2, Oct. 11, 1984, p 32149.
- A motion in the House, if offered by a designated Member or his designee, to amend a Senate amendment to a House joint resolution on the Speaker's table with the text of an amendment printed in the Record. 99–1, Dec. 11, 1985, p 35989.
- The consideration in the House of a motion to take from the Speaker's table a House measure with Senate amendments thereto and concur in the Senate amendments without intervening motion. 95–1, Dec. 7, 1977, p 38721.

- Disagreeing to Senate amendments and for messaging such action to the Senate without intervening motion. 93–1, Nov. 29, 1973, p 38675.
- The consideration of a reported bill and for the consideration, after passage, of Senate amendments to another House bill, so as to commit the matters contained in both House-passed bills to one conference with the Senate. 95–2, Sept. 29, 1978, p 32664.

If the previous question is voted down on a resolution providing for consideration of the Senate amendments, the resolution is open to germane amendment. 91–2, June 17, 1970, pp 20159, 20198–200.

Should a resolution providing for concurring in Senate amendments to a House bill be rejected, the bill and amendments remain on the Speaker's table for further action by the House. 91–2, June 17, 1970, pp 20159, 20198–200.

Self-executing Special Orders

A recent trend in House-Senate relations has been the use of so-called ''self-executing'' special orders—that is, resolutions from the Committee on Rules which, if adopted by the House, make some legislative disposition of a Senate amendment, and eliminate the need for a motion to agree with, recede from, or otherwise dispose of the amendment. Such resolutions are sometimes referred to as ''hereby'' special orders because the House, in adopting the resolution as drafted, ''hereby'' agrees to the disposition of the amendment as proposed by that resolution. If the House adopts a resolution which by its terms takes a House bill with a Senate amendment from the Speaker's table and ''hereby'' agrees to that amendment (see, for example, 99–1, Mar. 5, 1985, p 4347), no further action by the House is required, and the amendment is never itself before the House for separate consideration. See Deschler's Ch 21 §§ 27.16, 27.19. In one recent instance, the special order disposed of Senate amendments to a House concurrent resolution on the Speaker's table in three ways: (1) by disagreeing to several designated amendments; (2) by agreeing with a specified amendment to one Senate amendment; and (3) by agreeing to the remainder of the Senate amendments. 99–2, Oct. 17, 1986, p 32982.

Special orders of this nature may include provisions for a motion to dispose of a Senate amendment as well as ''self-executing'' provisions applicable to a related proposition. The Committee on Rules may recommend a special order of business providing that a Senate amendment pending at the Speaker's table and otherwise requiring consideration in Committee of the Whole be ''hereby'' considered as adopted, which special order if adopted would abrogate the requirement of Rule XX. *Manual* § 828a. In one instance, a resolution permitted a separate motion to concur in a Senate

amendment prior to the stage of disagreement and also contained a ''self-executing'' provision adopting a separate resolution expressing the legislative intent of the House in concurring in the Senate amendment. 99–2, Sept. 12, 1986, p 23119.

§ 12. — By Unanimous Consent

Generally

Senate amendments may be considered in the House by unanimous consent (89–1, Oct. 19, 1965, p 27412), even though such amendments would normally require consideration in Committee of the Whole. 86–2, Sept. 1, 1960, p 18920; 87–1, July 31, 1961, p 14050; 87–2, Aug. 8, 1962, pp 15854, 15856. Typically, the House will agree by unanimous consent to take from the Speaker's table a House bill with Senate amendments and concur in or otherwise dispose of the amendments or permit the consideration of those amendments in the House. 88–1, Dec. 20, 1963, p 25365; 89–1, Oct. 19, 1965, p 27412. It may make such consideration in order on a future day. 95–2, Oct. 11, 1978, p 35736.

This procedure may be invoked to permit the House to consider a Senate amendment and concur in the Senate amendment with an amendment consisting of the text of a House-passed bill. 95–1, May 11, 1977, pp 14390 *et seq*. In one instance, pursuant to a single unanimous-consent request, the House amended a Senate amendment with the text of another bill introduced in the House, insisted on the House amendment, and requested a conference. 97–2, Mar. 16, 1982, p 4227. In a more recent instance, the House by unanimous consent made in order the consideration of a motion to disagree to *any* Senate amendment which might be added to a House-passed bill then pending in the Senate. Subsequently, pursuant to this authority, the House considered and adopted a motion disagreeing to a Senate amendment. 99–2, Aug. 15, 1986, p 22132.

Guidelines for Recognition

Recognition for unanimous consent to consider a Senate amendment on the Speaker's table may be subject to announced guidelines imposed by the Speaker as a pre-condition to such recognition. In recent years, the Speaker has indicated that he would entertain a unanimous-consent request for the disposition of a Senate amendment to a House-passed bill on the Speaker's table only if made by the chairman of the committee with jurisdiction, or by another member of the committee authorized formally or informally by the committee to make the request. Committee authorization of a Member to seek unanimous consent in the House to dispose of such amendments

need not necessarily be the result of an official vote of the committee, but may be informally communicated to the Chair by the committee chairman. See for example, 98–2, Apr. 26, 1984, p 10194; 100–1, Feb. 4, 1987, p 2675.

Form of Request as Affecting Recorded Votes

The pendency of a unanimous-consent request to take from the Speaker's table a measure with a Senate amendment and concur in the amendment precludes a demand for a roll call vote on the amendment, since it would be disposed of if the request is granted. 92–1, June 30, 1971, p 23095. The failure of a Member to object to the unanimous-consent request constitutes final House action on the measure, thereby precluding a vote on the amendment. However, a unanimous-consent request invoked merely to consider a Senate amendment in the House permits a vote on a subsequent motion to concur in the Senate amendment. 94–1, Sept. 26, 1975, pp 30616, 30617; 94–2, Mar. 11, 1976, p 6148; 94–2, June 29, 1976, p 21141.

§ 13. — By Suspension of the Rules

The House may consider a proposition, offered under suspension of the rules, taking a House bill with one or more Senate amendments from the Speaker's table and concurring in, disagreeing to, or making some other disposition of, the amendment(s). 93–1, Dec. 20, 1973, pp 42917, 42918; 94–1, Dec. 19, 1975, p 41876. Thus, the House may agree to a motion to suspend the rules and to a resolution taking such a bill from the Speaker's table and agreeing to the Senate amendment. 87–2, Aug. 27, 1962, pp 17671, 17681.

The House may agree to a motion to suspend the rules and adopt a resolution providing for the taking of a House bill with Senate amendments from the Speaker's table and concurring in the amendments with a designated amendment. 93–1, Dec. 30, 1973, pp 42883, 42884; 94–1, Dec. 19, 1975, p 41869. The language of the designated amendment may be stated in the motion. 94–1, Dec. 19, 1975, p 41954; 95–1, July 12, 1977, p 22483. Or the designated amendment may be set forth in the text of the resolution. 92–2, Oct. 14, 1972, pp 36477–83; 93–1, Dec. 20, 1973, pp 42883, 42884; 95–1, Sept. 27, 1977, p 31040. The House has also agreed to a motion to suspend the rules and agree to a resolution whereby the House ''shall be considered'' to have taken from the Speaker's table a House bill with a Senate amendment thereto, and to have agreed to the Senate amendment with a further amendment, and to have insisted on the House amendment and to have requested a conference with the Senate. 98–2, Aug. 8, 1984, p 22963.

The suspension procedure in such cases does not always require a resolution. The House has agreed to a motion to suspend the rules and take from the Speaker's table a Senate bill with a Senate amendment to House amendments thereto, and to concur in the Senate amendment. 93–2, May 6, 1974, p 13085; 95–1, Oct. 18, 1977, pp 34086, 34087, 34091.

§ 14. — By Sending to Conference

House bills returned with Senate amendments requiring consideration in the Committee of the Whole may be taken from the Speaker's table and sent to conference by unanimous consent. 6 Cannon § 732. Such amendments may also be sent to conference by motion under the provisions of House Rule XX clause 1. 91–2, July 9, 1970, pp 23518, 23524; 92–1, June 28, 1971, pp 22406–13, 22429. That rule provides that a motion to disagree with an amendment of the Senate to a House bill and to request or agree to a conference with the Senate is always in order if the Speaker, in his discretion, recognizes for that purpose and if the motion is made by direction of the committee having jurisdiction of the subject matter of the bill. Rule XX clause 1. *Manual* § 827. On a bill that has been jointly referred, the motion must be authorized by all committees reporting thereon. 95–2, Sept. 26, 1978, p 31623. But a committee discharged from a sequential referral need not authorize a motion made by direction of the committee that reported the bill. 103–2, Oct. 4, 1994, p ____. The motion is privileged at any time the House is in possession of the papers if the appropriate committee has authorized the motion and the Speaker in his discretion recognizes for that purpose. 94–1, Mar. 20, 1975, p 7646. Generally, see CONFERENCES BETWEEN THE HOUSES.

While a privileged motion to go to conference under clause 1 Rule XX is pending, preferential motions to concur or to concur with amendment are not in order (the stage of disagreement not having been reached). Compare 95–1, Dec. 7, 1977, p 38724.

§ 15. Motions; Precedence Before Disagreement

The stage of disagreement not having been reached on a Senate amendment, motions in the House to dispose of the amendment are not privileged and require unanimous consent or a special rule from the Committee on Rules, the only exception being a motion to ask or agree to a conference under Rule XX clause 1. 95–1, Dec. 7, 1977, p 38721. See also 98–2, Oct. 11, 1984, p 32308. But if the amendment has been called up by House order pursuant to a unanimous-consent request or a special rule, and the House order does not specify the motion to be considered, the amendment may

then be disposed of by invoking one of the motions shown in Chart No. 1 below. Such motions are available in the specified sequence (*Manual* § 528b), and are arranged in order of precedence.

The preferential sequence of motions at this stage is intended to allow the House to perfect the amendment—that is, to first consider any amendments to the Senate amendment before considering whether to agree or disagree to it. Thus, at this stage, the motion to concur with an amendment takes precedence over the motion to concur. 91–2, Dec. 30, 1970, pp 44116, 44123. These motions yield to the motion to disagree and send to conference by direction of the committee under Rule XX. *Manual* § 528a.

A motion in the House to dispose of a Senate amendment to a House bill is itself subject to the secondary motions ordinarily applicable to any question which is under debate—to table, to postpone to a day certain, to amend, and to refer—all of which remain privileged under clause 4 of Rule XVI. See *Manual* § 528b. However, an amendment to a motion to concur in a Senate amendment with an amendment may not be offered unless the Member having the floor yields for that purpose, or unless the previous question on the motion is defeated. 88–1, May 14, 1963, pp 8508–11.

On rejection of a preferential motion to concur in a Senate amendment with an amendment, the question recurs on a pending motion to concur in the Senate amendment. 92–2, June 28, 1972, pp 22959, 22974. On rejection of a motion to concur in a pending Senate amendment, the amendment is open to germane amendment or to a motion to disagree. 90–1, July 17, 1967, p 19033.

A motion to concur in a Senate amendment with an amendment (prior to the stage of disagreement) is not subject to a demand for a division of the question. 8 Cannon § 3176. Divisibility after the stage of disagreement, see §§ 20, 21, infra.

B. Reaching the Stage of Disagreement

§ 16. In General

Reaching the stage of disagreement is a critical threshold in the disposition of amendments between the Houses. Before the stage of disagreement is reached on Senate amendments, motions in the House to dispose of amendments which require consideration in Committee of the Whole are not privileged and require unanimous consent unless other action is made in order by special rule or by the exception to Rule XX clause 1, relating to motions to ask or agree to a conference. §§ 8, 15, supra. After the stage of disagreement has been reached, motions in the House to resolve the matter

in disagreement are privileged and do not require unanimous consent for their consideration. § 17, infra. The stage of disagreement having been reached, a bill with Senate amendments may be called up as privileged. 8 Cannon § 3194.

Whether or not the House has reached the stage of disagreement is also important in determining the kinds of motions that may be sought and the precedence thereof. These motions (*Manual* § 528), which may be sought by any Member, are shown in Chart No. 1 and are preferential in the order listed.

MOTIONS TO DISPOSE OF SENATE AMENDMENTS

SENATE AMENDMENT

Motions before the stage of disagreement	Motions after the stage of disagreement
1. Concur with amendment(s)	1. Recede and concur
2. Concur	2. Recede and concur with amendment(s)
3. Disagree and request or agree to conference	3. Insist on disagreement and request or agree to a (further) conference
4. Disagree	4. Insist on disagreement
	5. Adhere

Chart No. 1.

The stage of disagreement between the two Houses is reached after the House in possession of the papers has either disagreed to the amendment(s) of the other House or has insisted on its own amendment to a measure of the other House and has messaged that action to the other body. *Manual* § 828b. Thus, the House having disagreed to a Senate amendment and the

Senate having insisted thereon, the stage of disagreement is reached when the Senate action is messaged to the House; and motions to dispose of the matter in disagreement are then privileged for consideration in the House. 95–1, Nov. 29, 1977, p 38013.

The House has reached the stage of disagreement on a bill when it has disagreed to a Senate amendment or insisted on a House amendment (with or without requesting or agreeing to a conference) and has informed the Senate by message of its action. Only previous insistence or disagreement by the House itself places the House in disagreement (and not merely disagreement, insistence, or amendment by the Senate). *Manual* § 528c. Compare 94–2, Sept. 16, 1976, p 20868.

Once the stage of disagreement has been reached on a bill with amendments, the House remains in the stage of disagreement until the matter is finally disposed of and motions for its disposition are privileged whenever the House is in possession of the papers. This principle applies both where the stage of disagreement is reached without a conference, and where matters remain in disagreement after conferees have reported. *Manual* § 528c. Where a Senate amendment reported from conference in disagreement remains in disagreement following subsequent action by the House and the Senate, a further motion to dispose of that Senate amendment in the House is privileged and subject to one hour of debate under Rule XXVIII clause 2(b). 95–2, Feb. 22, 1978, p 4061.

In one instance, the stage of disagreement between the two Houses was reached when the House communicated to the Senate its insistence upon its amendment and its request for a conference, even though the Senate subsequently disregarded the House request and further amended the House amendment without specifically disagreeing to the House amendment. 94–2, Sept. 16, 1976, p 30872.

C. After the Stage of Disagreement; Motions

§ 17. In General; Privilege of Motions

Once the stage of disagreement has been reached and the House is in possession of the papers, motions in the House to resolve the matter in disagreement no longer require unanimous consent for their consideration. 90–1, Nov. 9, 1967, pp 31878, 31880; 94–2, Sept. 16, 1976, p 30872. The House having disagreed to a Senate amendment and the Senate having insisted thereon, motions to dispose of the matter in disagreement are privileged for consideration in the House. 95–1, Nov. 29, 1977, p 38013. The stage of disagreement having been reached, the motion is privileged when

offered by any Member. 99–2, Mar. 18, 1986, p 5217. Such motions are privileged for consideration in the House even where the Senate has receded from an amendment (to which the House has disagreed) and concurred with a further amendment which is before the House for the first time. The House has not expressed its position on the new Senate amendment, but since the stage of disagreement has been reached, motions to dispose of the new amendment are privileged. 95–1, Nov. 29, 1977, p 38033. Once the stage of disagreement has been reached between the two Houses on an amendment to a House bill, motions in the House to dispose of the matter at subsequent permissible stages of amendment remain privileged. 94–2, Sept. 16, 1976, p 30872.

§ 18. Motions in Order; Precedence of Motions

Generally

The stage of disagreement having been reached on a Senate amendment, the amendment is subject to disposition in the House by various motions. The primary motions to dispose of the amendment, arranged in preferential order (*Manual* § 528d), are shown in Chart No. 1, § 16. These motions have precedence in the order shown without regard to the order in which they may be offered. 5 Hinds § 6324. A demand for the previous question by the Member in charge of a bill does not preclude consideration of a preferential motion. 8 Cannon § 3204.

In theory preferential status is accorded to that motion which tends most quickly to bring the Houses into agreement. 8 Cannon § 3204; 88–1, Dec. 10, 1963, pp 23950, 23952; 89–1, Apr. 29, 1965, pp 8861, 8866; 90–1, Nov. 9, 1967, pp 31878, 31880. Thus, the stage of disagreement having been reached, the motion to recede and concur takes precedence of a motion to recede and concur with an amendment, since such a motion most promptly tends to bring the two Houses together. 91–2, Dec. 30, 1970, pp 44116, 44123. Under the same rationale, the motion to recede and concur takes precedence at this stage over the motion to insist on disagreement. 90–1, Sept. 12, 1967, pp 25201, 25211; *Manual* § 528d.

Preferential status of motion to insist on disagreement to a Senate amendment providing legislation on an appropriation bill, see CONFERENCES BETWEEN THE HOUSES.

Where the matter in disagreement is a House amendment, see § 28, infra.

Secondary Motions

Secondary motions applicable when any question is under debate such as the motion to table, to refer, or to postpone (*Manual* § 782), are available to dispose of a Senate amendment and are in order if and when they are preferential. The motion to table a Senate amendment in disagreement is preferential over other motions to dispose of the amendment. § 19, infra. The motion to refer a Senate amendment is preferential only to the motion to adhere to disagreement. *Manual* § 528d. And a motion to recommit with instructions to report back forthwith with an amendment may not be offered after the previous question has been ordered on a motion to recede and concur, a motion of higher privilege. 94–2, Sept. 16, 1976, p 30887. Motions to postpone, either to a day certain or indefinitely, may be presumed to have the lowest privilege with respect to a Senate amendment after the stage of disagreement has been reached. *Manual* § 528d.

§ 19. — To Lay on the Table

The stage of disagreement having been reached, a motion to table a Senate amendment to a House bill is in order (5 Hinds §§ 5424, 6201–6203) and takes precedence over other motions to dispose of the amendment (*Manual* § 528d), including the motion to insist on disagreement. 95–2, Sept. 28, 1978, p 32334. Adoption of a motion to table the amendment carries the bill to the table. *Manual* § 785.

Laying on the table a motion to dispose of a Senate amendment should be distinguished from the tabling of the Senate amendment itself. A privileged motion to dispose of a Senate amendment in disagreement is itself subject to the motion to table. 95–2, Feb. 22, 1978, p 4072. Thus, a motion to recede and concur is subject to the motion to table (95–2, Feb. 22, 1978, p 4072), as is the motion to concur with an amendment (95–2, May 16, 1978, p 13921). A motion to table a privileged motion to dispose of an amendment between the Houses is in order before debate thereon or at the end of debate (and before the previous question is ordered). 99–2, Mar. 18, 1986, pp 5217–20.

Adoption of a motion to table a motion to dispose of an amendment represents final adverse disposition of that motion at that stage of the question, but would not necessarily dispose of the amendment or the bill, since other motions could still be available to dispose of the amendment. See 99–2, Mar. 18, 1986, pp 5217–20.

§ 20. — To Recede and Concur

In General

A Senate amendment in disagreement is subject to disposition in the House pursuant to a privileged motion to recede from disagreement and concur in the amendment. 99–2, Mar. 20, 1986, p 5796. The motion to recede and concur is highly preferential, yields only to the motion to table (§ 19, supra), and takes precedence over:

- The motion to recede and concur with an amendment. 8 Cannon §§ 3198, 3202; 91–2, Dec. 30, 1970, p 44116.
- The motion to insist on disagreement. 5 Hinds § 6208; 8 Cannon § 3194; 92–2, June 28, 1972, p 22959.
- A motion to disagree and request a conference. 94–2, Jan. 27, 1976, p 1036; 95–1, Oct. 13, 1977, p 33689.
- A motion to adhere. 5 Hinds § 6271; 87–1, July 20, 1961, pp 13079–84.

A motion to recede and concur is in order even after the previous question has been demanded on a motion of lesser privilege, such as a motion to insist. 5 Hinds § 6208.

If the House agrees to the motion to recede and concur, other less preferential motions to dispose of the amendment fall and are not voted upon. 86–1, Sept. 14, 1959, pp 19740–42. But if the House rejects the motion to recede and concur, further action must be taken to dispose of the amendment. *Manual* § 488. If the motion to recede and concur in the Senate amendment is defeated, a further motion relating to the amendment in disagreement is in order. 90–1, Oct. 17, 1967, pp 29044, 29048. If a motion to insist on disagreement to the Senate amendment was pending, the question would recur on that motion. 87–2, Sept. 19, 1962, p 19945; 88–1, Dec. 17, 1963, pp 24815–22.

Dividing the Question

The question on a motion to recede and concur in a Senate amendment may be divided on demand of any Member. 8 Cannon § 3203. 86–2, June 23, 1960, pp 14074, 14081; 88–1, May 14, 1963, p 8506; 94–2, Aug. 10, 1976, pp 26781, 26782. The division may be demanded as a matter of right (under clause 6, Rule XVI); the House does not vote on whether to permit a division of the question. 92–2, June 28, 1972, pp 22959, 22974.

If the question on receding and concurring is divided before the ordering of the previous question, the hour rule for debate applies to each motion separately. See 94–1, Dec. 4, 1975, p 38717.

If the question has been divided and the motion to recede is agreed to, then the question of concurring is before the House. 88–1, May 14, 1963,

pp 8508–11. However, the House having receded, it is no longer in the stage of disagreement with the Senate on that amendment, and in that event a motion to amend takes precedence over the motion to concur (5 Hinds §§ 6209–6211; 8 Cannon § 3198). Thus, where a motion to recede and concur has been divided, and the House recedes, a motion to concur with an amendment then takes precedence over the motion to concur, is considered as pending if part of the original motion, and is voted on first. 100–2, Sept. 30, 1988, pp 27268–74; 101–1, Oct. 11, 1989, p 24097; *Manual* § 525.

§ 21. — To Recede and Concur With an Amendment

A Senate amendment in disagreement is subject to disposition in the House pursuant to a motion to recede from disagreement and concur in the amendment with an amendment. See for example 97–1, May 20, 1981, p 10319. This motion ordinarily yields to the motion to recede and concur (5 Hinds §§ 6219–6223; 8 Cannon §§ 3200, 3202) but takes precedence over the motion to insist (5 Hinds § 6223) and over the motion to adhere. *Manual* § 528d.

A motion to recede and concur with an amendment is subject to amendment if the previous question is voted down (90–1, Dec. 11, 1967, pp 35811–33, 35841), or if the Member in control of the floor yields for that purpose. 94–1, Dec. 15, 1975, p 40713; 94–2, Sept. 27, 1976, p 32720. And where one motion to recede and concur with an amendment is rejected, another motion to recede and concur with a different amendment may be offered. 87–2, Oct. 13, 1962, pp 23474, 23476–83; 90–1, Oct. 25, 1967, pp 29933, 29942–44; 92–1, May 20, 1971, pp 16197, 16201.

A motion to recede from disagreement to a Senate amendment and concur therein with an amendment may, on demand of any Member, be divided to permit separate votes; the House votes first on the motion to recede, and (if the House does recede) then on the motion to concur with an amendment. 94–1, Oct. 7, 1975, p 32604; 99–1, Nov. 1, 1985, pp 30147, 30163. If the House refuses to recede, the motion to further insist is in order. § 22, infra.

§ 22. — To Insist

A Senate amendment in disagreement may be disposed of pursuant to a motion to insist on disagreement or to the compound motion to insist on disagreement and request a (further) conference. Since the motion to insist on disagreement and request a conference is more likely to bring the two Houses together, that motion takes precedence over the simple motion to in-

sist. See *Manual* § 528d. Where both Houses insist and neither House asks for a conference or recedes the bill fails. 5 Hinds § 6228.

A motion to insist on disagreement to a Senate amendment yields to preferential motions, such as a motion to recede and concur in the amendment (5 Hinds § 6225; 8 Cannon § 3183), but takes precedence over the motion to refer (5 Hinds § 6225). A motion to insist on disagreement and request a further conference is not in order so long as preferential motions to dispose of amendments in disagreement are pending. 90–1, Oct. 17, 1967, pp 29044, 29048.

The motion to insist on disagreement is in order and most commonly used after the House has refused to recede from disagreement to a Senate amendment. 89–1, Apr. 29, 1965, pp 8867, 8871; 93–1, June 29, 1973, pp 22381 *et seq.* Thus where the House refuses to recede from its disagreement to a Senate amendment—the motion to recede and concur having been divided on demand of a Member—the motion to insist on disagreement is in order. 97–2, Dec. 16, 1982, p 31719. See also 91–1, Dec. 22, 1969, pp 40902, 40914, 40921. Similarly, a motion to recede and concur with an amendment having been divided, and the House refusing to recede, the question recurs on a pending motion to insist upon disagreement. 95–2, Oct. 12, 1978, p 36396. Underlying these precedents is the reasoning that since the refusal of the House to recede is not equivalent to insisting upon disagreement, the House may vote separately on that question pursuant to the motion to insist on disagreement. 93–1, June 25, 1973, pp 21171 *et seq.*

A motion to further insist on disagreement and request a further conference may be in order after the rejection of a conference report (87–2, Sept. 20, 1962, pp 20094, 20105, 20128) or after the conference managers have reported a Senate amendment in disagreement (91–1, Dec. 3, 1969, p 36759). For example, on rejection of a motion to recede and concur in a Senate amendment with an amendment, the manager of the report may be recognized to offer a motion that the House insist on its disagreement to the amendment. 96–1, May 23, 1979, p 12489. And where a motion to recede and concur with an amendment to an amendment reported in disagreement from conference has been divided, and the motion to recede is rejected, the manager is entitled to recognition to offer a motion to insist on disagreement. 94–1, Sept. 24, 1975, pp 30081, 30082.

Rejection of a motion to insist upon disagreement to a Senate amendment is not tantamount to concurrence; further action is required to dispose of the Senate amendment. Indeed, a motion to insist having been rejected, the same Member who had offered the motion may be recognized to offer a motion to recede and concur. 87–2, Sept. 19, 1962, p 19945.

§ 23. — To Refer to Committee

A Senate amendment in disagreement may be disposed of pursuant to a motion to refer (or recommit) to committee when and if such motion is preferential. The simple motion to refer is preferential only to the motion to adhere. *Manual* § 528d. The motion to refer must yield to other motions of higher preferential status, such as the motion to recede and concur (8 Cannon § 3259) and the motion to insist (5 Hinds § 6225). A motion to recommit with instructions may be offered, but it too must yield to preferential motions to dispose of the amendment. Thus, a motion to recommit with instructions to report back forthwith with an amendment may not be offered after the previous question has been ordered on a motion to recede and concur, a motion of higher privilege. 94–2, Sept. 16, 1976, p 30887. But after the House has receded from disagreement to a Senate amendment, a motion to amend is preferential, so that, after the previous question is ordered on a motion to concur, the House having already receded, a motion to recommit with instructions to amend would be in order. 8 Cannon § 2744.

§ 24. — To Adhere

Where the House has expressed its disagreement to a Senate amendment and the amendment remains in disagreement after a Senate response thereto, a motion that the House adhere to its disagreement is in order. See for example 5 Hinds § 6239. This motion yields to motions of higher precedence, such as the motion to recede and concur and the motion to insist. 5 Hinds § 6324. See also *Manual* § 528d. The motion to adhere is rarely used in modern practice, but when both Houses have insisted, neither inclining to recede, it is in order. 5 Hinds § 6163. When both Houses adhere the bill fails (5 Hinds §§ 6163, 6313, 6324, 6325) even though the disagreement may be over a very minor amendment (5 Hinds §§ 6233–6240).

The adoption of a motion of higher preferential status—to recede from disagreement to the amendment—precludes a motion to adhere to the same amendment. But the House may recede from its disagreement to certain amendments and adhere to it as to other amendments to the same bill. See 5 Hinds § 6229. Adherence to House amendment, § 28, infra.

Adherence is to be distinguished from insistence in that adherence represents an uncompromising position and may not be accompanied by a request for a conference. The House that votes to adhere does not ask a conference, although it may agree to one, whereas the other House may vote to insist and, at the same time, seek a conference. 5 Hinds §§ 6241, 6308. And one House, having adhered, may recede from its adherence and agree

to a conference asked by the other, or it may vote to further adhere. 5 Hinds § 6251.

§ 25. Debate; Recognition

Debate in the House on a privileged motion to dispose of a Senate amendment in disagreement is under the hour rule. 94–1, Dec. 4, 1975, p 38717. When an amendment is reported from conference in disagreement, the Speaker recognizes the manager of the report for a motion to dispose of the amendment, which motion is debatable for one hour, equally divided between the majority and minority (and sometimes a third Member) pursuant to Rule XXVIII clause 2(b). (See CONFERENCES BETWEEN THE HOUSES.) The equal division of debate between the majority and minority parties under Rule XXVIII clauses 2(a) and (b) technically applies to conference reports and to motions to dispose of amendments reported from conference in disagreement, and does not apply to the Member offering the initial motion to dispose of an amendment in disagreement which has not been reported from conference but which is subsequently before the House. 94–2, Jan. 27, 1976, p 1036. However, the current practice in the House is to divide the time in this fashion on all motions to dispose of amendments still in disagreement following a conference. *Manual* § 912b.

While a motion to dispose of the amendment in disagreement may be displaced by a preferential motion, the Member offering the preferential motion does not thereby gain control of time for debate. 89–1, Apr. 29, 1965, pp 8861, 8866; 90–1, Sept. 12, 1967, pp 25201, 25211; 90–1, Oct. 24, 1967, pp 29837, 29842. Thus, although the motion to concur in a Senate amendment takes precedence over the motion to disagree where the stage of disagreement has been reached, the Member offering the preferential motion does not thereby gain control of the time for debate, which remains in the control of the proponent of the original motion under the hour rule. 95–1, Oct. 13, 1977, p 33689; 95–1, Nov. 29, 1977, p 38033.

Similar rules are applied to amendments reported from conference in disagreement. The motion to recede and concur with an amendment has preference over a motion to insist on disagreement, but the proponent of the preferential motion does not thereby gain control of the time for debate. 94–1, May 14, 1975, pp 14385, 14386. And while the motion to recede and concur in a Senate amendment reported from conference in disagreement is preferential to the motion to recede and concur with an amendment, the Member offering the preferential motion does not thereby gain control of time for debate. 94–1, Dec. 4, 1975, p 38714.

§ 26. Disposition of Nongermane Senate Provisions

Under recent changes in the rules, points of order may be made and separate votes demanded on motions to reject portions of conference reports and Senate amendments in disagreement containing language which would not have been germane if offered in the House. Clauses 4 and 5 of Rule XXVIII (*Manual* § 913b). Clause 4 permits points of order against language in a conference report which was originally in a Senate bill and which would not have been germane if offered to the House-passed version, and permits a separate motion to reject such portion of the conference report if found nongermane. 99–2, Oct. 15, 1986, p 31498. Clause 5 permits a similar procedure if a Senate amendment or portion thereof would have been nongermane if offered in the House. Motions to reject under these clauses are subject to 40 minutes of debate, equally divided between a proponent and opponent of the motion. *Manual* § 913c. See GERMANENESS.

III. House Amendments to Senate Measures

§ 27. In General; Degree of Amendment

A Senate bill may be subject to amendment by the House when the bill is called up in the House pursuant to a unanimous-consent request or a motion authorized by a special rule from the Committee on Rules. §§ 2–4, supra. A Senate amendment to a House measure is also subject to amendment by the House; the motion to concur with an amendment will lie before the stage of disagreement (§ 15, supra), while the motion to recede and concur with an amendment is in order after the stage of disagreement (§ 21, supra). As pointed out elsewhere, however, an amendment to an amendment to an amendment is in the third degree and not in order. See AMENDMENTS. This rule governs the two Houses, according to Jefferson's Manual, and is applicable to amendments between the Houses (*Manual* § 529), as shown in Chart No. 2.

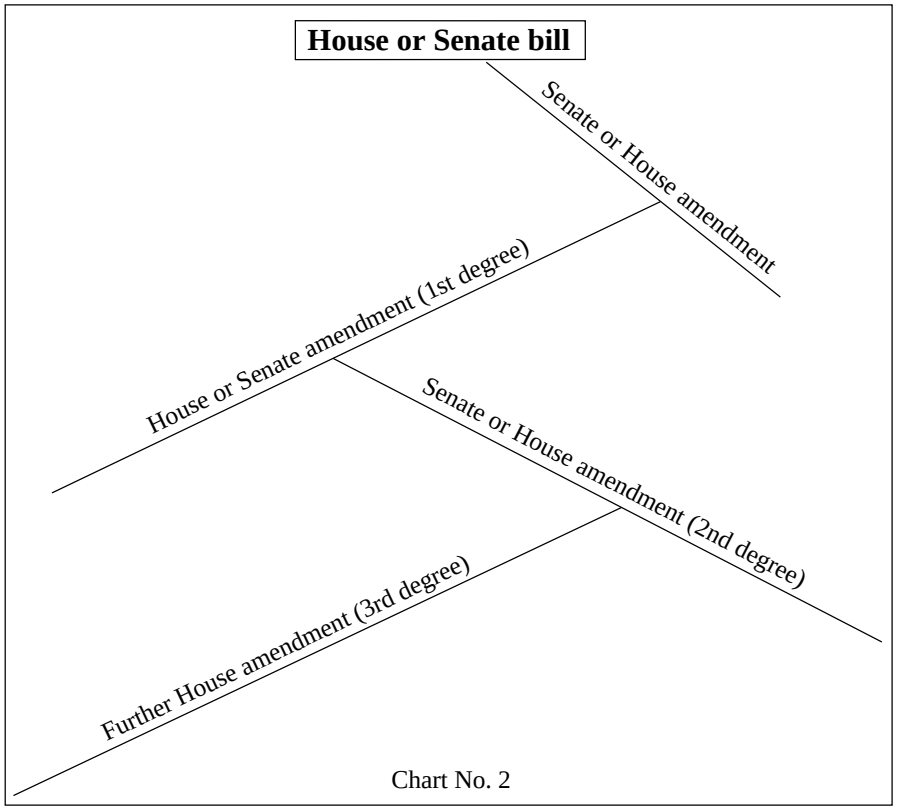

Chart No. 2

Where a bill of one House is amended by the other, the originating House may respond with an amendment, and the second House may offer an amendment to that amendment, but there the process stops; any further amendment is in the third degree and not in order. 5 Hinds § 6163. An amendment of one House being amended by the other, the first House may amend the last amendment, but further amendment is not permissible. 5 Hinds §§ 6176–6178. Thus, where a Senate amendment to a House bill has been reported in disagreement, and a House amendment thereto is amended by a further Senate amendment, motions in the House to agree or disagree to the Senate amendment to the House amendment are in order, but a motion to concur with a further amendment would be in the third degree and not in order. 93–1, Oct. 18, 1973, pp 34699, 34704. Likewise, where there is pending in the House a motion to amend a Senate amendment to a House amendment to a Senate bill, and the House adopts the motion, the Senate may then either concur in or disagree to the House amendment, but a further Senate amendment would be in the third degree. 94–1, Dec. 15, 1975, pp

40711, 40712. However, conference reports recommending amendments at this stage are not subject to a third degree point of order.

The House may consider a third degree amendment by unanimous consent, under suspension of the rules, or pursuant to a special order from the Committee on Rules. Unanimous-consent requests have been used to seek consideration of amendments in the fourth or fifth degree. 99–2, Mar. 20, 1986, p 5796. If the House adopts an amendment pursuant to such a procedure, the Senate may no longer consider itself bound by Jefferson's proscription against third-degree amendments and amend further.

§ 28. Germaneness Requirements

An amendment offered in the House to a Senate amendment must ordinarily be germane to the particular Senate amendment to which it is offered, it not being sufficient that it be germane to the provisions of the bill. 5 Hinds § 6188; *Manual* § 797. Thus, where a motion is offered to concur in a Senate amendment with an amendment, the proposed amendment must be germane to the Senate amendment. 88–1, May 14, 1963, p 8506; 95–2, Feb. 22, 1978, p 4073. The test of germaneness of an amendment in the nature of a substitute to a Senate amendment—proposed in a motion to concur therein with an amendment—is the relationship between the proposed amendment in its entirety and the Senate amendment (and not the relationship between any one provision of the amendment and any one provision of the Senate amendment). 95–2, Oct. 4, 1978, p 33506.

The rule of germaneness applies to motions to recede and concur in a Senate amendment with an amendment. 92–1, July 29, 1971, p 28053. Such a motion must be germane to the Senate amendment. 98–2, Aug. 10, 1984, pp 23988, 23989. But where a Senate amendment proposes to strike out language in a House bill, the test of the germaneness of a motion to recede and concur with an amendment is the relationship between the language in the motion and the provisions in the House bill proposed to be stricken by the Senate amendment. 93–2, Dec. 12, 1974, pp 39272, 39273.

A House rule permits points of order against portions of motions to concur or concur with amendment in nongermane Senate amendments, the stage of disagreement having been reached; if such points of order are sustained, the rule permits separate motions to reject such nongermane matter. Rule XXVIII clause 5. *Manual* § 913c. For more comprehensive discussion, see GERMANENESS.

§ 29. Amending House-passed Amendments; Receding, Insisting, Adhering

Generally

Jefferson reasoned that while the House may modify an amendment from the Senate, the House cannot amend its own amendment ''because they have, on the question, passed it in that form.'' *Manual* § 526. Thus while the House may recede from or insist on its own amendment, it may not couple an amendment with this action. 5 Hinds § 6163. Indeed, few motions are available to enable the House to act on its own amendment to a Senate measure. These motions (*Manual* § 528b), which are utilized primarily when the Senate has disagreed to the House amendment, are shown below:

- To recede.
- To insist and request or agree to a conference.
- To insist.
- To adhere.

These motions have precedence in the House in the order named without regard to the order in which they may be offered. 5 Hinds § 6324. Accordingly, the Senate having disagreed to a House amendment, the House may recede from or insist on its own amendment. When both Houses have insisted, neither inclining to recede, it is in order to adhere. 5 Hinds § 6163.

Receding

The House may recede from its own amendment to a Senate bill by motion (*Manual* § 524) or by unanimous consent (87–1, Sept. 7, 1961, p 18595; 89–2, Apr. 18, 1966, p 8207). If the House recedes from its own amendment, the bill is passed unless the motion otherwise specifies, or unless the Senate has concurred in the House amendment with a Senate amendment. 96–1, Nov. 9, 1979, p 31755. If the House recedes from its amendment to a Senate amendment, further House action is in order: the House may either concur in the Senate amendment or amend it. *Manual* § 528d.

The stage of disagreement having been reached on a House amendment to a Senate amendment to a House proposition, the House may recede from its amendment and, having receded, may then concur in the Senate amendment with a different amendment (and such separate actions are not tantamount to the House's receding from its own amendment with an amendment as proscribed by Jefferson's Manual). 95–1, Oct. 12, 1977, p 33448. Of course, where the House has previously concurred in a Senate amendment

with an amendment, the House does not, merely by receding from its amendment, agree to the Senate amendment. *Manual* § 524.

Insisting

The motion to insist on a House amendment yields to the motion to recede therefrom. 5 Hinds § 6270. But where both Houses insist and neither ask a conference or recede the bill fails. 5 Hinds § 6228.

The compound motion to insist on a House amendment and request or agree to a conference takes precedence over simple motions to insist or to adhere. Preferential status is accorded to the compound motion because of the greater likelihood that it will resolve the differences between the two Houses. *Manual* § 528b.

Adhering

Although it has been permitted, adherence prior to the stage of disagreement has been extremely rare (5 Hinds § 6303) and is used infrequently under the modern practice even after the stage of disagreement. The motion to adhere to an amendment is the least privileged motion, yielding as it does to the motion to recede and the motion to insist. In addition, the ordinary motions applicable to any question which is under debate—to table, to postpone to a day certain, and to refer—remain privileged under clause 4 of Rule XVI. See *Manual* § 528b.

It has been held that after the previous question has been moved on a motion to adhere, a motion to recede may not be made. 5 Hinds § 6310.

Effect of Adherence; Adherence as Related to Conferences

When both Houses adhere—one House adhering to its amendment and the other to its disagreement therewith—the bill fails. 5 Hinds §§ 6163, 6313, 6325. Adherence is to be distinguished from insistence in that adherence represents an uncompromising position and may not even be accompanied by a request for a conference. 5 Hinds § 6308. However, one House, having adhered, may recede from its adherence and agree to a conference asked by the other, or it may vote to further adhere. 5 Hinds § 6251. Conferences have often been asked and granted where only one House has adhered. 5 Hinds §§ 6241–6244.

Special Rules

Research References
4 Hinds §§ 3152–3265
7 Cannon §§ 758–845
6 Deschler Ch 21 §§ 16–19
Manual §§ 686b, 726, 728, 729, 786, 877a

§ 1. In General

Jurisdiction and Authority

Jurisdiction over the ''order of business'' of the House is given by standing rule to the Committee on Rules. Rule X clause 1(m). *Manual* § 682a. Under this authority, the Rules Committee commonly reports resolutions—called ''special orders'' or ''special rules''—that specify the manner in which a particular measure is to be taken up and the procedures to be followed during its consideration. Such resolutions, once agreed to by the House, give privilege to the measure to be considered. Deschler Ch 21 § 16. As noted elsewhere, measures are often taken up by unanimous consent (see UNANIMOUS-CONSENT AGREEMENTS) or considered under suspension of the rules (see SUSPENSION OF RULES), and certain measures are privileged in their own right under other rules (see APPROPRIATIONS; ORDER OF BUSINESS; and QUESTIONS OF PRIVILEGE.

The power of the Rules Committee to report resolutions varying the order of business or providing a special order is very broad, being limited only as expressly restricted by the rules of the House. The only absolute restrictions on that power are those provisions [Rule XI clause 4(b)] protecting the motion to recommit (see REFER AND RECOMMIT) and the Calendar Wednesday call of committees (see CALENDAR WEDNESDAY). The restriction relating to Calendar Wednesday business preserves the requirement that a two-thirds vote is required to dispense with business under Rule XXIV clause 7. Rule XVI clause 4 provides that one motion to recommit ''shall be in order'' after the ordering of the previous question. *Manual* § 782. This

motion is considered a fundamental prerogative of the minority. Special rules which directly prevent the use of this motion are specifically precluded. *Manual* § 729a.

In the 104th Congress, a new restriction on the authority of the Committee on Rules was imposed by § 426 of the Unfunded Mandates Act. *Manual* § 1007; 2 USC § 658e(a). Section 426 precludes the consideration of a special rule waiving points of order under § 425 of the Unfunded Mandates Act. However, this restriction is ''enforced'' by raising the question of consideration against the rule. The House's attention is thus focused on the waiver, but after limited debate, the House can decide to consider the waiver and proceed to adopt the rule.

Because of the wide diversity of their use in the legislative process, special rules are discussed in the context of many other procedural articles in this work. See for example AMENDMENTS; COMMITTEES OF THE WHOLE; CONFERENCES BETWEEN THE HOUSES; CONSIDERATION AND DEBATE; GERMANENESS OF AMENDMENTS; ORDER OF BUSINESS; POSTPONEMENT; SENATE BILLS AND AMENDMENTS BETWEEN THE HOUSES.

Application to Unreported Measure

Special orders are customarily requested from the Rules Committee by a committee that has reported, or has jurisdiction over, the measure to be considered. A special rule providing for the consideration of a bill is not invalidated by the fact that the bill is not on the calendar (8 Cannon § 2259; 88–2, Aug. 19, 1964, pp 20212, 20213), nor by the fact that the bill has no committee sponsorship (99–2, Apr. 16, 1986, p 29973). A special rule may make in order the consideration of a measure not yet reported from a standing committee (see Deschler Ch 21 §§ 16.15–16.17) or provide for the immediate consideration of a conference report when it is eventually reported from the committee of conference (Deschler Ch 21 §§ 16, 17). A special rule may even provide for the consideration of a bill that has not yet been introduced. 8 Cannon § 3388. The Rules Committee also may report resolutions prescribing certain procedures to apply during the further consideration of a bill already under consideration in the House or Committee of the Whole. 8 Cannon § 2258. Deschler Ch 21 § 16.2. See also CONSIDERATION AND DEBATE.

The Rules Committee has the authority to report a special order discharging a standing committee even though that committee may have ordered reported another similar bill on the same subject. See 99–2, Oct. 16, 1986, p 32190. In one instance, a special order discharged six committees from an unreported bill similar to one previously reported. 99–2, May 15, 1986, p 10954.

Waivers

The Committee on Rules may report resolutions temporarily waiving or altering a rule of the House that would otherwise prohibit the consideration of the underlying bill. Statutory provisions enacted in the exercise of the House's rule-making authority also may be waived in this manner. 94–1, Mar. 20, 1975, pp 7676–78; 94–1, Mar. 24, 1975, p 8418. A special-order resolution may waive any rule that might impede the consideration of a bill or amendment thereto. Points of order do not lie against the consideration of the special order as it is for the House to determine, by a majority vote on the adoption of the resolution, whether certain rules should be waived. Deschler Ch 21 § 16.9. However, a statutory rule may contain language restricting the authority of the committee to recommend a waiver. For example, the Unfunded Mandates Reform Act of 1995 (Pub. L. No. 104–4) added a new part B to title IV of the Congressional Budget Act of 1974 that imposes several requirements on committees with respect to ''Federal mandates,'' establishes points of order to enforce those requirements, and precludes the consideration of a rule or order waiving such points of order in the House. Section 426(a) of the Act establishes a point of order against consideration of any rule or order that waives the application of § 425. *Manual* § 1007. See also BUDGET PROCESS.

In 1995, the House adopted a rule directing that, to the ''maximum extent possible,'' special-order resolutions be specific with respect to any waiver of a point of order against the underlying measure or against its consideration. Rule XI clause 5(e). *Manual* § 731a.

§ 2. Reporting Special Rules

Generally; Typography

Reports from the Rules Committee repealing or amending a House rule must use appropriate typography showing the proposed omissions or insertions. A Ramseyer-type comparative print (see COMMITTEES) is required under clause 4(d) of Rule XI whenever the Committee on Rules reports a resolution repealing or amending a rule of the House or part thereof. *Manual* § 731. This clause does not apply to resolutions which merely provide temporary waivers of rules during the consideration of particular legislative business. 94–1, Mar. 20, 1975, p 7677; 94–1, Mar. 24, 1975, p 8418.

Privilege and Precedence of Reports

A report from the Committee on Rules enjoys high privilege. 8 Cannon § 2260. It takes precedence over a privileged motion to discharge a committee (see Deschler Ch 21 § 17.7), and has been called up before District of

Columbia business which is privileged on District Day (see Deschler Ch 21 § 17.8). When it has been called up in the House after its one-day layover, the question of consideration cannot be raised. 8 Cannon § 2440. After the resolution has been reported and is under debate, no matter of lesser privilege may interrupt its consideration without the consent of the House. 91–1, Oct. 29, 1969, pp 32076–83. Only one motion to adjourn is permitted and dilatory motions are proscribed. *Manual* § 729a. Once the resolution is under debate, the House can postpone further consideration and proceed to other business only by unanimous consent. Deschler Ch 21 § 18.37. However, the manager of the resolution can withdraw it from consideration before a decision has been made thereon. Rule XVI clause 2. Deschler Ch 21 § 18.

Although highly privileged, a report from the Committee on Rules yields to the presentation of conference reports (5 Hinds § 6449), and to questions of privilege (8 Cannon § 3491), and is not in order after the House has voted to go into Committee of the Whole (5 Hinds § 6781).

Reporting to the House; Calling Up

The Rules Committee must present special-order resolutions to the House within three legislative days of the time when it orders a report with respect to the underlying measure. Rule XI clause 4(c). *Manual* § 730.

Ordinarily, a report from the Committee on Rules reaches the floor by being called up by a member of that committee who has been so authorized. But under Rule XI clause 4(c), if the report has been on the House calendar for seven legislative days without being called up, any member of the committee may call up the resolution provided he gives one day's notice of his intention to do so. *Manual* § 730. This rule may be invoked by a minority member of the committee. 96–1, Nov. 13, 1979, p 32185; 96–2, Sept. 25, 1980, p 27417.

In the event an adverse report is made by the Committee on Rules on an order-of-business resolution, any Member of the House may call up the report and move the adoption of the resolution on days when motions to discharge committees are in order. *Manual* § 730. See DISCHARGING MEASURES FROM COMMITTEES.

Same-day Consideration

While it is always in order to call up for consideration a resolution reported from the Committee on Rules relating to the order of business, it may not be considered on the same legislative day reported unless so determined by a vote of not less than two-thirds of the Members voting (*Manual* § 729a), a quorum being present. 94–1, July 30, 1975, p 25826; 94–1, Nov.

14, 1975, p 36638. If consideration is ordered by a two-thirds vote, a point of order that the resolution has not been printed does not lie. 95–1, Feb. 2, 1977, p 3344. The requirement that two-thirds of Members voting must agree to same-day consideration does not apply to resolutions called up during the last three days of a session. 91–2, Dec. 31, 1970, p 44292. The two-thirds vote requirement may be waived by adoption of a resolution reported from the Rules Committee (93–2, Dec. 19, 1974, p 41571) or by House adoption of a resolution offered under suspension of the rules (93–2, Dec. 16, 1974, p 40170).

Exceptions to the two-thirds vote requirement for same-day consideration of Rules Committee reports are found in Rule XI clause 2(l)(6) (*Manual* § 715) and in Rule XXVIII clause 2 (*Manual* §§ 912a, 912b). If the only effect of a rule is to waive the three-day layover requirement of a particular reported bill or the three-day layover and two-hour availability requirement of a conference report and amendments in disagreement, such a reported rule may be considered on the same day the report is filed without a two-thirds vote. See 98–2, Aug. 10, 1984, p 23978.

§ 3. Forms

Filing a Rule

MEMBER: Mr. Speaker, by direction of the Committee on Rules, I present a privileged report for printing under the Rule.

THE SPEAKER: The Clerk will report the title of the resolution. [*After Clerk reports title*.] The report is referred to the House Calendar and is ordered to be printed.

Calling Up a Rule

MEMBER: Mr. Speaker, by direction of the Committee on Rules, I call up House Resolution ____ and ask for its immediate consideration.

THE SPEAKER: The Clerk will report the resolution. [*After the resolution is read in full*.] The gentleman from ____ is recognized for one hour.

Calling Up Rule on Same Day It Is Filed

MEMBER: Mr. Speaker, by direction of the Committee on Rules, I present a privileged report for printing under the Rule.

THE SPEAKER: The Clerk will report the title of the resolution. [*After Clerk reports title*.] The report is referred to the House Calendar and is ordered to be printed.

THE SPEAKER: The question is, will the House consider the resolution. [*If two-thirds of those voting, a quorum being present, vote in the affirmative*.] The House has voted to consider the resolution and the gentleman from _____ is recognized for one hour.

§ 4. Debate on Special Rules; Voting

Special-order resolutions reported from the Committee on Rules are considered in the House, as distinguished from the Committee of the Whole. They are debatable under the hour rule (*Manual* § 758), and require a majority vote for adoption (4 Hinds § 3169). The resolution is not subject to division (Rule XVI clause 6; *Manual* § 791). The two-thirds vote needed for same-day consideration does not alter the requirement that a simple majority actually adopt the resolution. Deschler Ch 21 § 18. See also VOTING.

A Member recognized to call up an order-of-business resolution by direction of the Committee on Rules controls one hour of debate thereon and may offer one or more amendments thereto (95–1, July 29, 1977, p 25653), and authorization of the committee is not required should the proponent exercise his right to amend. 101–2, Sept. 25, 1990, p ____. Other Members may be recognized only if yielded time. 90–2, Oct. 8, 1968, pp 30217, 30222–24. It is customary for the Member calling up the resolution to yield 30 minutes of the hour to a minority member of the Committee on Rules for purposes of debate only. The minority member is permitted to yield his time in segments to other Members. The resolution is not subject to amendment from the floor unless the Member in charge yields for that purpose or unless the House fails to order the previous question. 94–2, Feb. 26, 1976, pp 4625, 4626; 98–2, Feb. 22, 1984, p 2965; 99–2, Sept. 24, 1986, p 25889. Debate is not limited to the specifications of the resolution but may go to the merits of the underlying bill, since the issue is whether the bill should be considered under the terms specified or considered at all. 96–1, July 25, 1979, p 20609.

In the event that the previous question is rejected, the Member who has led the opposition will be recognized by the Chair for one hour. The Member recognized may yield such time as he desires, may offer a germane amendment to the resolution, and may move the previous question on the amendment and the resolution. Deschler Ch 21 § 18. Following the rejection of the previous question on a rule, the strictures against dilatory motions in Rule XI clause 4(b) no longer apply; motions to table or refer may be offered following the rejection of the previous question. *Manual* § 729b.

The Speaker has the authority to postpone for up to two legislative days a record vote on ordering the previous question or on the adoption of a rule. See Rule I clause 5(b), *Manual* § 631. See VOTING.

§ 5. Modification of Special Rules

By Resolution

The Committee on Rules may report a privileged resolution modifying the operation or effect of a previous special order reported by that committee and adopted by the House. 96–2, Apr. 30, 1980, p 9467. Such a resolution may provide additional procedures to govern the further consideration of a measure already pending in Committee of the Whole, and may include limitations on further debate or amendments. 98–1, May 4, 1983, p 11036.

By Unanimous Consent

A special rule reported from the Committee on Rules while pending before the House may be modified by unanimous consent. 96–1, Sept. 28, 1979, p 26834; 98–1, July 14, 1983, p 19140. By unanimous consent the House has altered the terms of an adopted special order to make an additional amendment in order in the Committee of the Whole (100–2, Aug. 11, 1988, p 22105), or to change the specified order or sequence of amendments in Committee (101–2, Oct. 3, 1990, p ____).

A unanimous-consent request to modify the terms established by a special order should be made in the House even if the special order provides for the consideration of a measure in the Committee of the Whole. An appropriate time to request unanimous consent to modify the terms of such a special order is after its adoption by the House and prior to consideration of the underlying measure in the Committee. 99–2, Sept. 24, 1986, p 25889.

Once consideration of the underlying measure has begun in the Committee of the Whole, the Committee has no authority to significantly change the applicable special rule. *Manual* § 877a. Unanimous-consent requests may be entertained in the Committee if their effect is to allow a minor or incidental change from the procedure required by the special rule. 93–2, Mar. 26, 1974, p 8239. But where a unanimous-consent request proposes to directly alter the basic structure of the rule, the Chair should refuse to entertain the request. See 93–1, Dec. 12, 1973, p 41153. For example, the Chair has refused to entertain unanimous-consent requests:

- To permit a substitute to be read by sections for amendment where the special rule did not so provide. 93–1, Dec. 12, 1973, p 41153.
- To extend the time limitation for consideration of amendments beyond that set by a special order, which required the question to be put after a specified number of hours. 102–1, Oct. 30, 1991, p ____.
- To modify the terms of a special order permitting consideration of certain amendments only en bloc. 99–2, Sept. 11, 1986, p 22871.

- To change the control of time for general debate by certain Members as allocated by special rule. 99–2, Oct. 9, 1986, p 29984.
- To permit consideration of an amendment out of the order specified in a special rule. 100–2, May 25, 1988, p 12275; 102–1, Oct. 31, 1991, p ____.

The Committee of the Whole sometimes rises to permit a unanimous-consent request in the House that changes the mandate of a special order. 99–2, Sept. 11, 1986, p 22871.

Unanimous-consent requests have been entertained in Committee of the Whole:

- To permit the modification of a designated amendment made in order by a special rule. 94–2, Sept. 1, 1976, p 28877.
- To permit a supporter of an amendment to claim debate time allocated by special order to an opponent, where no opponent seeks recognition. 101–2, May 23, 1990, p ____.
- To shorten the time set by special order for debate on a particular amendment. 101–2, Aug. 1, 1990, p ____.
- To lengthen the 10 minutes of controlled debate time set by special rule for debate on an amendment by an additional 10 minutes. 102–1, May 21, 1991, p ____.

In addition, the House may, by unanimous consent, delegate to the Committee of the Whole authority to entertain unanimous-consent requests to change procedures contained in an adopted House special order. 99–2, Aug. 11, 1986, p 20633.

Recognition to offer a unanimous-consent request, see UNANIMOUS-CONSENT AGREEMENTS.

§ 6. Types of Special Rules

In recent Congresses, special orders of business have provided for the consideration of amendments in a variety of ways, from ''open'' rules (which are silent on the amendment structure) to ''closed'' (which deny all amendments). In between these two extremes, special orders have:

- Specified consideration that is open in part and restricted in part.
- Permitted only specified amendments.
- Required amendments to be printed.
- Specified that certain amendments be ''considered as adopted.''
- Authorized the floor manager to offer en bloc amendments consisting of the text of other amendments made in order.
- Left the amendment process open but only within a certain time frame.

One procedure involving the consideration of amendments is called ''King of the Hill.'' While regular order does not permit further amendments to a

text once it has been amended in its entirety, a ''King of the Hill'' rule permits several substitute amendments to be voted on, with the last one adopted the one to be finally voted on in the House. More recently the Committee on Rules has reported a special order of business providing for a variation of that procedure. This procedure permits consideration of conflicting amendments in a series with the one winning the most votes being finally voted on in the House.

Reports of special orders of business often make in order as original text something other than the text of the introduced measure. For example, the base text may be specified to be:

- A substitute reported by the committee of jurisdiction (the most common text made in order).
- The text of another introduced bill or a specified preprinted amendment.
- An amendment first adopted in the Committee of the Whole (104–1, Aug. 2, 1995, p ____).
- Original text as modified by amendments ''self-executed'' (i.e., considered adopted) upon the adoption of the special order or of the amendments in the Committee of the Whole (104–1, Apr. 15, 1995, p ____).

Special orders of business often relate to the consideration of conference reports and amendments between the Houses. For example a rule may:

- Permit a motion to ''hook-up'' a House-passed measure with a similar Senate-passed measure and permit a motion to go to conference.
- Waive points of order, thus permitting consideration of a conference report which would otherwise be vulnerable to a point of order.
- Provide for a motion to dispose of Senate amendments to a House bill (104–1, Dec. 13, 1995, p ____).
- Permit a third-degree amendment to be offered to a Senate amendment.
- Allow conferees to refile a conference report in a corrected form without a new meeting or new signatures (104–1, Nov. 17, 1995, p ____).

The Committee on Rules may report resolutions which provide special procedures to expedite consideration or accomplish specific results. For example, they may:

- Permit the Chairman of the Committee of the Whole to postpone and cluster requests for recorded votes on amendments offered in the Committee of the Whole.
- Give priority of recognition for the offering of amendments to Members who preprinted their amendments in the *Congressional Record*.
- Adopt a concurrent resolution correcting an enrollment (104–1, June 29, 1995, p ____).
- Link two measures separately considered into one engrossment (102–1, Oct. 16, 1991, p ____).

Prior to the adoption of the rules, a special order of business has been offered at the direction of the majority party conference to provide for consideration in the House of a resolution to adopt the rules of a new Congress (104–1, Jan. 4, 1995, p ____).

Suspension of Rules

Research References

5 Hinds §§ 6790–6862
8 Cannon §§ 3397–3426
6 Deschler Ch 21 §§ 9–15
Manual §§ 902–907

§ 1. Generally; Motions to Suspend

In General

A motion to suspend the rules is authorized by House Rule XXVII clause 1, adopted in its original form in 1822. *Manual* § 902. The motion is privileged (§ 5, infra), but is in order only on the days specified by the rule (§ 4, infra), with recognition to make the motion being at the discretion of the Speaker (§ 6, infra). The motion, which no longer requires a second (§ 6, infra), is debatable for 40 minutes (§ 7, infra), is not amendable (§ 8, infra), and requires a two-thirds vote for adoption (§ 10, infra).

Effect of Special Rules From the Committee on Rules

The Committee on Rules may report a resolution authorizing the consideration of a bill on which suspension has been rejected by the House. 8 Cannon § 3392; Deschler Ch 21 § 15.8. The House may also adopt a special rule to permit suspension motions on other days of the week or to permit the House to suspend the rules by majority vote as distinguished from a two-thirds vote. 8 Cannon § 3393.

§ 2. Uses of the Motion

In General

In the early practice the motion to suspend the rules was used only to enable a matter to be taken up. 5 Hinds §§ 6852, 6853. Under the modern practice, it is possible by one motion both to bring a matter before the House and pass it under suspension of the rules. The proponent moves ''to suspend the rules and pass'' the bill. 5 Hinds §§ 6846, 6847. In this form, all rules which would ordinarily impede an immediate vote on passage of a measure are set aside. The underlying bill is passed without the intervention of questions such as ordering the previous question, third reading, or recommittal. See § 5, infra.

A motion to suspend the rules may provide for the discharge of a committee from the consideration of a bill and for the final passage of it. 5 Hinds § 6850. Indeed, the motion to suspend may provide for a series of procedural steps, such as the reconsideration of the vote passing a bill, the amendment of the bill, and its passage again. 5 Hinds § 6849. Forms for offering motion, see § 6, infra.

To Pass Legislative Measures

Under the modern practice, the motion to suspend the rules is used frequently to pass reported legislative measures which are perceived to have a broad degree of support and little need for prolonged debate. It is also available to bring before the House bills which would otherwise be subject to the inhibitions of other House rules and to a point of order. See 8 Cannon § 3424; Deschler Ch 21 § 9. The motion may provide for the passage of a bill even if the bill has not been reported or referred to any calendar or even previously introduced. 8 Cannon § 3421. The motion may be used (*inter alia*):

- To adopt a proposed amendment to the U.S. Constitution (both the motion and the amendment requiring a two-thirds vote). Deschler Ch 21 § 9.21.
- To pass an original bill or resolution submitted from the floor and not considered by a committee. Deschler Ch 21 § 9.19.
- To pass a bill which is pending before a committee but which has not been reported. Deschler Ch 21 § 9.
- To pass a Senate bill similar to a House bill. Deschler Ch 21 § 9.3.
- To pass a Senate bill as amended, insist on the House amendment and request a conference. 103–2, Mar. 24, 1994, p ____.

- To take a bill from the Speaker's table and agree to Senate amendments. 8 Cannon § 3425.
- To pass a resolution providing for concurrence in nongermane Senate amendments to a House bill or for concurrence with a further House amendment. 93–1, Dec. 21, 1973, p 43251.

If a motion to suspend the rules and pass a proposition is voted down, a similar proposition may be brought up under another motion to suspend the rules (Deschler Ch 21 § 15.7) or pursuant to a special rule from the Committee on Rules (Deschler Ch 21 § 15.8).

To Provide Special Orders

In the early practice, the motion to suspend the rules was used frequently to adopt special orders for the consideration of business. 5 Hinds § 6820. Today, special rules or orders for the consideration of particular business are usually adopted pursuant to a simple majority vote of the House on a report from the Committee on Rules (4 Hinds § 3169; 5 Hinds § 6790) or by unanimous consent (Deschler Ch 21 § 9), but motions to suspend the rules are still used:

- To adopt special orders of business without a report by the Committee on Rules. Deschler Ch 21 §§ 9.13–9.18.
- To permit several bills to be reported. 5 Hinds § 6857.
- To take up for consideration a House joint resolution with Senate amendments and agree to a conference. Deschler Ch 21 § 9.13.
- To agree to a conference report which has been ruled out of order by the Speaker (93–2, Dec. 20, 1974, p 41860) or which has not been printed (8 Cannon § 3423), or which contains matter not in disagreement between the two Houses (8 Cannon § 3406).
- To recommit a conference report to a conference committee. Deschler Ch 21 § 9.5.
- To adopt a resolution extending the time for debate on a motion. Deschler Ch 21 § 9.18.

§ 3. Rules Suspended by Adoption of Motion

In General

If not otherwise qualified, and if not specifically prohibited by House rule, a motion to suspend the rules, if adopted, suspends all rules, including the standing rules of the House, the unwritten law and practice of the House (8 Cannon § 3406), as well as the parliamentary rules as stated in Jefferson's Manual (5 Hinds § 6796). The motion may be used to suspend a rule requiring that a quorum be present when a bill is reported from committee. 102–2, Sept. 22, 1992, p ____. And no points of order against the consideration of the bill may be raised, such as points of order based on defects in report-

ing the bill, Ramseyer rule violations, or the like. Deschler Ch 21 §§ 9.7–9.12.

Rules Not Subject to Suspension

Where a particular rule of the House states that its requirement is not subject to suspension, the Speaker may not entertain a motion for the suspension of that particular requirement. 5 Hinds §§ 7270, 7283, 7285. Among these rules are:

- The rule relating to the use of the Hall of the House. *Manual* § 918.
- The rule relating to the privileges of the floor. *Manual* § 919.
- The rule prohibiting the introduction of gallery occupants. *Manual* § 764.

§ 4. When Motion is in Order; Notice

The motion to suspend the rules is in order only on the calendar days of Monday and Tuesday, and during the last six days of a session. Rule XXVII clause 1. *Manual* § 902. However, the Speaker may be authorized to recognize for motions to suspend the rules on other days by unanimous consent (Deschler Ch 21 § 10.2) or by resolution (Deschler Ch 21 § 10.3). The ''last six days'' are not applicable until both Houses have agreed to a concurrent resolution establishing a date for *sine die* adjournment (or until the final six days of a session under the Constitution). 92–2, Oct. 3, 1972, p 33501.

Separate days were formerly accorded to committee motions and motions offered by individual Members, but this distinction is no longer recognized. Deschler Ch 21 § 11.1.

Notice Requirements

The rules and precedents of the House require no advance notice to Members of bills called up under suspension. 95–2, Mar. 20, 1978, p 7535. And copies of reports on bills considered under suspension are not required to be available in advance. 96–1, May 21, 1979, p 11943. However, most bills considered in the House pursuant to a motion to suspend the rules are on a list maintained by the leadership which identifies those bills on which motions to suspend will be entertained by the Speaker on a given day. This list is maintained so as to give appropriate notice to the Members, and ordinarily only such bills as have been cleared with the leadership through this procedure are brought up under suspension. Deschler Ch 21 § 9.

§ 5. Precedence of Motion; Application of Other Motions

When the Motion Takes Precedence

The consideration of a motion to suspend the rules and pass a measure is privileged in the House if made on a day on which the Speaker is authorized to recognize for such motions. Thus the Speaker may recognize for such a motion notwithstanding the pendency on Monday of a request for recognition to consider District of Columbia business, the matters being of equal privilege. Deschler Ch 21 § 10.7. The motion is also of equal privilege with the motion to instruct conferees after 20 days of conference. 100–2, Mar. 1, 1988, p 2750.

Where the motion provides for both suspension of the rules and action on the proposition, it is entertained although the yeas and nays may have been demanded on another highly privileged motion (5 Hinds § 6835), or although the previous question may have been ordered or moved on another matter (5 Hinds §§ 6827, 6831–6833; 8 Cannon § 3418). The motion is admitted pending a decision on a point of order on the pending matter. 8 Cannon §§ 3422, 3424.

When Motion Yields

When a question of the privilege of the House is pending, such as an election contest, that question takes precedence over a motion to suspend the rules. 5 Hinds § 6825. Similarly, if a question as to the administration of the oath of office of a Member is pending, a motion to suspend the rules is not in order. 5 Hinds § 6826. The motion also yields to the consideration of a bill under a special order (5 Hinds § 6838), motions from the Discharge Calendar (7 Cannon § 1018), and the motion to adjourn (5 Hinds §§ 5743–5746), but only one motion to adjourn (8 Cannon § 2823; Deschler Ch 21 § 13.16) unless a quorum fails (5 Hinds §§ 5744, 5746).

Since there cannot be two motions to suspend the rules pending at the same time (5 Hinds §§ 6836, 6837), a pending motion must be disposed of before another one can be entertained by the Chair. 5 Hinds § 6814.

Application of Other Motions

Many motions which are commonly offered during the consideration of a measure are inapplicable to the motion to suspend. The motion to suspend may not be tabled (5 Hinds § 5406), postponed by motion (5 Hinds § 5322), recommitted (5 Hinds § 6860), or divided for a vote (5 Hinds §§ 6141–6143, 6860). The motion to amend may not be applied to a motion to suspend the rules (5 Hinds § 5405), and the motions for the previous question and

to recommit are not applicable to a proposition being considered under suspension (Deschler Ch 21 § 13.17).

The motion to reconsider may not be applied to a negative vote on the motion to suspend. 5 Hinds § 5645; 8 Cannon § 2781.

§ 6. Offering the Motion; Recognition

The Speaker's Discretion

The Speaker is not required to recognize for motions to suspend the rules. 5 Hinds §§ 6791–6794. On suspension days, recognition for a motion to suspend the rules lies entirely within the discretion of the Speaker. 5 Hinds §§ 6791–6794; 8 Cannon §§ 3402–3404; Deschler Ch 21 §§ 11.4–11.6. In the exercise of his discretion, the Speaker may recognize for a motion to suspend the rules on a bill even though the House has previously rejected a similar motion on the same bill. Deschler Ch 21 § 11.9.

As noted elsewhere (§ 4, supra), bills and resolutions to be brought up under suspension are normally cleared with the leadership, and the Speaker may decline recognition for a motion which does not comply with this practice, but he has the discretion to recognize for a motion to suspend the rules and pass emergency legislation which has not been scheduled in advance. Deschler Ch 21 § 9.22.

For many years, the motion to suspend the rules required a second, so that the House, without debate, could decline to entertain the motion. A second was usually considered ordered by unanimous consent; but if challenged the question was determined by a vote with tellers. The practice of requiring a second was dropped by a change in the rules adopted in the 102d Congress. 102–1, Jan. 3, 1991, p ____ (H. Res. 5).

The Speaker ordinarily extends recognition to the chairman of the committee having jurisdiction over the subject matter of the proposition. Deschler Ch 21 §§ 11.10–11.13. The chairman is not required to have the authorization of his committee to so move. Deschler Ch 21 § 11.11.

Forms

Mr. Speaker, I move to suspend the rules and to pass the bill, H.R. _____ [as amended].

Note: The title of the bill is read by the Clerk; the Member's motion need not recite the title.

Mr. Speaker, I move to suspend the rules and agree to the House Resolution, H. Res. _____ [as amended].

Mr. Speaker, I move to suspend the rules and concur in the Senate amendment to the bill H.R. _____.

Mr. Speaker, I move to suspend the rules and adopt [or recommit] the conference report on H.R. _____.

Mr. Speaker, I move to suspend the rules and agree to the resolution I send to the desk.

§ 7. Consideration and Debate

Reading Requirements

Under the early practice, it was held that the motion to suspend the rules did not dispense with the reading of the bill called up for consideration pursuant to the suspension procedure. 5 Hinds § 5277; 8 Cannon § 3400. Under the modern suspension practice, the motion is itself read, as is the title of the bill being considered, but other reading requirements are ordinarily deemed waived. Deschler Ch 21 § 14.4.

Debate

A motion to suspend the rules is debatable under Rule XXVII clause 2 even though the proposition presented is itself not otherwise debatable. 5 Hinds § 6822. Debate should be confined to the object of the motion and may not range to the merits of a bill not scheduled for suspension on that day. 102–1, Nov. 23, 1991, p ____.

Motions to suspend the rules are debatable for 40 minutes under the controlling rule, with 20 minutes to be given to debate in favor of the proposition and 20 minutes in opposition. *Manual* § 907. The 40 minutes of debate is divided between the mover and a Member opposed to the bill. If it develops that the mover is opposed to the bill, some Member in favor is recognized for debate. 8 Cannon § 3416.

A Member rising to claim 20-minutes' time in opposition may be challenged by another Member:

MEMBER: Is the gentleman seeking recognition opposed to the motion? If not I demand the time in opposition.

The rule and precedents (5 Hinds § 6802; 8 Cannon § 3415) prescribe priorities in recognition for control of time in opposition to a motion to suspend the rules:

- Opponents have priority.
- Among opponents, members of the committee of jurisdiction have priority.
- Among committee members opposed, minority members have priority in order of full committee seniority.

The allocation of the time is within the discretion of the Members controlling it (Deschler Ch 21 § 13.10), and alternation of recognition between Members on both sides of the aisle is not required (2 Hinds § 1442; Deschler Ch 21 § 13.9). No Member may speak in debate on the motion unless he is yielded time by one of the Members in control of the time.

Deschler Ch 21 § 13.7. And time yielded to a Member may not be reserved or yielded to a third Member. 8 Cannon § 3417.

The proponent of the motion is entitled to open and close debate in favor of the motion. Deschler Ch 21 §§ 13.13, 13.14.

The House may by unanimous consent or resolution alter the normal procedure for debate on the motion; in so doing, the House may extend the time for debate or designate the Members to control the time. 8 Cannon § 3414; Deschler Ch 21 §§ 13.3, 13.18. Where debate is extended by unanimous consent, the Speaker divides the time in the same ratio as during the 40 minutes of debate allowed by the rule. 8 Cannon § 3415.

§ 8. Amendments

Amendments from the floor are not in order to propositions being considered for passage under suspension of the rules. 5 Hinds §§ 5405, 6858, 6859; Deschler Ch 21 § 14.8. Only those amendments included in the motion to suspend are in order, and the Member making the motion may not yield to other Members for further amendment. Deschler Ch 21 § 14.6. This prohibition against offering amendments applies to *pro forma* amendments and to motions to strike the enacting clause. Deschler Ch 21 §§ 14.11, 14.12. If it is desired, after a motion to suspend the rules and pass a bill has been offered, to amend the proposition, it is necessary to withdraw the motion and reoffer it in new form. Deschler Ch 21 § 14.3.

The bill and any proposed amendments in the motion are reported (usually by title only) and considered as one entity, and no separate vote is taken on the amendments. Deschler Ch 21 §§ 14.4, 15.5. Committee approval of such amendments is not required. Deschler Ch 21 § 14.2; 102–2, June 22, 1992, p ____.

§ 9. Withdrawal of Motion

A motion to suspend the rules may be withdrawn or modified (5 Hinds §§ 6840, 6844; 8 Cannon §§ 3405, 3419) at any time before the Chair puts the question and a voice vote is taken thereon. 97–1, July 27, 1981, pp 17561–63. And the motion may be withdrawn by unanimous consent even after the Speaker has put the question on its adoption. Deschler Ch 21 § 13.23.

§ 10. Voting on the Motion

In General

A two-thirds vote is required for the adoption of a motion to suspend the rules under Rule XXVII clause 1. *Manual* § 902. ''[T]wo-thirds of the Members voting'' is construed as two-thirds of the Members present and voting for or against the motion (votes of those ''present'' are not counted). Deschler Ch 21 § 15.2; 97–1, Dec. 16, 1981, pp 31850–56. The two-thirds vote requirement may be waived pursuant to a special order from the Committee on Rules authorizing a suspension of the rules by a simple majority vote. 8 Cannon §§ 3393, 3399.

Postponing Votes

Roll call votes on a motion to suspend the rules may be postponed by the Speaker under the conditions specified by Rule I clause 5(b). Under this rule, the Speaker may postpone such a vote to a designated time or place in the legislative schedule within two legislative days. *Manual* § 631. At the designated time, the Speaker puts the question on each motion on which further proceedings have been postponed in the order in which the motions have been entered. 93–2, June 4, 1974, p 17521. (Postponing votes generally, see VOTING.)

Once the Speaker has postponed roll call votes to occur at a designated place in the legislative schedule, he may subsequently redesignate the time when the votes will be taken within the appropriate period. 98–2, June 5, 1984, p 14897; 98–2, June 6, 1984, p 15080; 100–2, Oct. 3, 1988, pp 27782, 27878.

Where the Speaker postpones further proceedings on a motion under this rule, the question is no longer being put to a vote for purposes of permitting a point of order of no quorum until the question recurs as unfinished business. 95–1, Sept. 26, 1977, p 30948. And it is too late to demand a recorded vote on the motion after the Speaker has announced that further proceedings on that motion have been postponed. The demand is not in order until the motion is again before the House as unfinished business. 93–2, June 17, 1974, p 19334.

Unanimous-consent Agreements

Research References

4 Hinds §§ 3058–3060, 3155–3159
7 Cannon §§ 758–763
7 Deschler Ch 23 §§ 42–48
Manual §§ 528, 757, 854, 870, 872, 877a, 881

§ 1. In General; Effect of Agreement

Generally

A request for unanimous consent is in effect a motion (8 Cannon § 2794) to suspend the order of business temporarily (4 Hinds § 3058) so as to permit some action which is not in dispute and to which no Member has any objection. An objection by any Member terminates the request. Deschler Ch 23 § 45.6.

The practice of the House in allowing some action to be taken by unanimous consent began in the 1830's, when the House, responding to the increased pressure of legislative activity, unanimously agreed to a special order permitting it to consider a bill which was not in the regular order of business. 4 Hinds § 3155. This use has now become commonplace. In the modern practice in the House, many items of business are considered as a result of unanimous-consent requests. The device is also used to facilitate passage—to expedite the reading of a bill, to control or extend the time for debate, or to take a recess. §§ 7, 8, infra. See also CONSIDERATION AND DEBATE.

Availability in the Committee of the Whole

Unanimous-consent requests are in order both in the House and the Committee of the Whole. Thus, unless in conflict with a House order or special rule, the committee may by unanimous consent permit the withdrawal of an amendment (Rule XXIII clause 5), limit general debate (8 Cannon § 2553) or provide that a bill shall be considered as having been read and open to amendment (*Manual* § 872). However, unanimous consent may not be requested in the Committee of the Whole on matters properly cognizable only in the House. *Manual* § 877a; Deschler Ch 23 §§ 48.15, 48.16.

§ 2. Recognition of Members for Requests

Generally

The recognition of Members to offer unanimous-consent requests is at the discretion of the Chair. Deschler Ch 23 § 45.4. A Member seeking unanimous consent for some purpose must be recognized by the Chair for that specific purpose and a Member so recognized may not seek the further consent of the House for some other purpose. Thus, a Member may not be recognized to consider a particular bill where he has been recognized only to proceed for one minute. Deschler Ch 23 § 48.3.

The Speaker may decline recognition where the Member making the request has failed to comply with the Speaker's policy that he and the majority leaders be notified in advance of the intention to submit unanimous-consent requests for changes in the order of business. 6 Cannon § 708; Deschler Ch 23 § 44.1. In recent years, the Speaker has consistently declined to recognize Members to seek consideration of unreported bills by unanimous consent unless assured that the majority and minority floor and committee leaderships have no objection. *Manual* § 757; 98-2, Jan. 25, 1984, p 354; 102–1, Jan. 3, 1991, p ____; 103–1, Jan. 5, 1993, p ____. In the 103d Congress this policy was extended to reported bills (103–1, July 23, 1993, p ____) and in the 102d Congress to the consideration of nongermane amendments to bills (102–1, Nov. 14, 1991, p ____). The Speaker's authority to decline to recognize individual Members to request unanimous consent for the consideration of bills derives from clause 2 of Rule XIV, which confers the general power of recognition on the Speaker. 98–2, Jan. 26, 1984, p 449. The Speaker has often enunciated his policies with respect to recognition for unanimous-consent requests. Deschler Ch 23 § 44.2. 98–2, Apr. 26, 1984, p 10194.

§ 3. Timeliness

Unanimous-consent requests must be timely (Deschler Ch 23 § 45.4); they cannot be entertained:

- In the House after the House has voted to go into the Committee of the Whole. 4 Hinds § 4727.
- When the absence of a quorum has been announced in the House. 6 Cannon §§ 660, 686, 689.
- During proceedings incident to securing a quorum of the Committee of the Whole. 8 Cannon § 2379.
- During consideration of a previous unanimous-consent request by another Member. Deschler Ch 23 § 48.1.

An objection to a unanimous-consent request must be timely made. Thus, when unanimous consent has been given for the consideration of a bill, amendments may be offered and may not be prevented by a subsequent objection of a Member. 5 Hinds § 5782. It is ordinarily too late to object to a unanimous-consent request after the Chair has asked if there is objection and has announced that he hears none. Deschler Ch 23 § 45.3.

§ 4. Stating the Request; Withdrawal

A Member seeking the unanimous consent of the House on some matter should rise and address the Chair. If he has more than one request, they should be put one at a time. Requests may not be coupled or put in the alternative. 6 Cannon § 709; Deschler Ch 23 § 43.2. And one unanimous-consent request should not be made contingent upon another. 6 Cannon § 709.

It is the Speaker's statement of the request as put to the House that is controlling; and he may recognize only such objections as are heard *after* he has put the request to the House. Deschler Ch 23 § 43.1.

A Member may withdraw his unanimous-consent request at any time before House action thereon, and unanimous consent to do so is not required. Deschler Ch 23 § 43.4.

§ 5. Objecting to the Request

Generally

An objection to a unanimous-consent request terminates the request, even if the objection is subsequently withdrawn. Deschler Ch 23 § 45.6. And since a request for unanimous consent is in effect a request to suspend the order of business temporarily, a demand for the ''regular order'' may be

made at any time while the request is being stated and is equivalent to an objection. 4 Hinds § 3058.

An objection to a unanimous-consent request may be made by any Member (Deschler Ch 23 § 42), including the Speaker (8 Cannon § 3383) or the Chairman of the Committee of the Whole (Deschler Ch 23 § 45.5). A Delegate can also object. 6 Cannon § 241; 98–2, June 29, 1984, p 20267.

When objecting to a unanimous-consent request, a Member must rise from his seat (2 Hinds § 1137; 102–2, June 23, 1992, p ____) and be identified for the Record (98–2, Oct. 4, 1984, p 30042). The objection is properly made to the request as put by the Chair, not as put by the Member making the request. Deschler Ch 23 § 45.

§ 6. Reserving Objections

A Member may reserve the right to object to a unanimous-consent request and by so doing obtains the floor. Deschler Ch 23 § 42. However, recognition for this purpose is within the discretion of the Speaker, and he may refuse to permit debate under the reservation and put the question on the request. Deschler Ch 23 §§ 46.1, 46.2.

A Member reserving the right to object to a unanimous-consent request holds the floor under that reservation subject to a demand for the regular order by any Member or by the Chair. 103–1, Feb. 17, 1993, p ____. A Member controlling the floor under a reservation of the right to object looses the floor if the request is withdrawn (Deschler Ch 23 § 46.4) or if the regular order is demanded (6 Cannon §§ 287, 288; Deschler Ch 23 § 46.3). If the regular order is demanded, the reserving Member must either object or withdraw his reservation. Deschler Ch 23 § 46.6; 103–1, Feb. 17, 1993, p ____.

§ 7. Scope of Request; Particular Uses or Applications

The unanimous-consent procedure is commonly used to change the regular order or waive the application of a particular rule. Under this practice, the House may by unanimous consent waive the requirement of a rule unless the rule in question specifies that it is not subject to waiver, even by unanimous consent. 91–2, July 29, 1970, p 24619. The unanimous-consent procedure is applied across a wide range of House business. It may be used:

- To swear in a Member-elect pending arrival of his credentials. 6 Cannon § 12.
- To take up a matter for consideration in the House as in Committee of the Whole. 4 Hinds § 4923.

- To increase the number of Members on a standing committee. 8 Cannon § 3381.
- To refer a bill for the payment of a private claim against the government. See Rule XXI clause 4.
- To correct a reference to committee. *Manual* § 854.
- To call up for consideration a nonprivileged resolution. Deschler Ch 23 § 47.4.
- To consider a bill under the general rules of the House. 87–1, July 31, 1961, p 14050; 91–1, Mar. 27, 1969, p 7895.
- To call up as privileged a bill not otherwise in order. 92–1, Sept. 29, 1971, p 33826; 95–1, Feb. 17, 1977, pp 4579–81.
- To present a bill in advance of the receipt of the report thereon, or to permit additional time to file the report. 8 Cannon § 2783.
- To agree to a special order for the consideration of certain business. 4 Hinds §§ 3165, 3166; 7 Cannon §§ 758–760.
- To alter the terms of a special order. 7 Cannon § 763.
- To transact other business on a day set apart for a special purpose. 5 Hinds § 7246.
- To agree to transact no business during a stated period. 7 Cannon §§ 760, 761.
- To offer a perfecting amendment to an amendment which has already been agreed to. Deschler Ch 23 § 47.3.
- To take from the Speaker's table a House bill with Senate amendments and to consider those amendments in the House. 99–2, June 19, 1986, p 16438. See also § 2, supra.
- To permit the House to recede from its own amendment to a Senate amendment prior to the stage of disagreement. 87–1, Sept. 7, 1961, p 18595; 89–2, Apr. 18, 1966, p 8207.
- To dispense with the first reading of a bill in Committee of the Whole. 8 Cannon § 2436.
- To dispense with the reading of an amendment in the Committee of the Whole. Deschler Ch 23 § 47.2.
- To withdraw a pending amendment in Committee of the Whole. Rule XXIII clause 5(a). *Manual* § 870.
- To return to a portion of a bill passed in the reading for amendment. 8 Cannon § 2929.
- To insert extraneous material in the *Congressional Record* (5 Hinds § 6990; Deschler Ch 23 § 47.11) or to permit Members to revise and extend their remarks or to vacate such permission (98–1, Nov. 15, 1983, p 32746).
- To postpone consideration of a measure (96–1, Mar. 26, 1979, p 6239), such as a resolution from the Committee on Rules (Deschler Ch 23 § 47.8) or to postpone certain votes thereon (95–2, Oct. 10, 1978, p 34918).
- To entertain a proposition for a recess. 8 Cannon § 3357. (A House rule permits a recess for a ''short time'' by declaration of the Speaker. See Rule I clause 12.)

- To suspend the order of business to permit the House to vacate an action taken on a bill. 6 Cannon § 711.
- To withdraw papers accompanying bills after they have been submitted to the House. 5 Hinds § 7259.
- To file a report or to file minority views while the House is not in session. 8 Cannon § 2252.
- To withdraw a report from a standing committee. 8 Cannon § 2312.

§ 8. — Application to Debate

The unanimous-consent procedure is frequently used in the House and in the Committee of the Whole to vary the rules governing debate. The procedure may be invoked:

- In the Committee of the Whole to permit minor variances from an adopted special rule in ways congruent with that rule of the House, but not to permit substantive alterations of special orders. Unanimous-consent requests for such alterations must be made in the House. *Manual* § 877a.
- To divide the time allotted for general debate between two or more Members. 5 Hinds § 5003; 8 Cannon § 2549.
- To increase the 40 minutes of debate allowed on a motion to suspend the rules. 8 Cannon § 3414.
- To close debate on titles of a bill that have not been read. Deschler Ch 23 § 47.1.
- To extend the time which has been fixed for five-minute debate in the Committee of the Whole. 86–2, June 23, 1960, p 24055; 90–1, Nov. 15, 1967, p 32691; 95–1, Oct. 20, 1977, p 34714.
- To close or limit debate under the five-minute rule in the Committee of the Whole. 87–1, May 10, 1961, p 7725; 88–2, Feb. 8, 1964, p 2614.
- To use exhibits in the Committee of the Whole during debate on a bill. 88–1, Aug. 1, 1963, p 13853.
- To change unparliamentary words spoken in debate (Deschler Ch 23 § 47.9) or to withdraw or delete such words from the Record (8 Cannon §§ 2538, 2540; Deschler Ch 23 § 47.10).
- To address the House for one minute before offering a motion. Deschler Ch 23 § 47.7.

§ 9. Limitations on Requests; Grounds for Denial

Generally

It cannot be assumed that the House has authority to waive any rule by unanimous consent. Sometimes the rule itself contains a specific provi-

sion that it cannot be suspended by unanimous consent. The rules specifically prohibit the use of the unanimous-consent procedure:

- To permit unauthorized persons to be admitted to the House floor. Rule XXXII clause 1.
- To bring to the attention of the House an occupant of the galleries. Rule XIV clause 8.
- To delete the name of the first sponsor of a bill or resolution. Rule XXII clause 4(b)(2).

In addition, there are many rules that are not subject to waiver under the practice of the House, even by unanimous consent. 91–2, July 29, 1970, p 24619. This is particularly true in the Committee of the Whole where debate and the amendment process are often restricted by the terms of a special order. In the Committee it is in order to permit by consent minor variances from an adopted special rule in ways congruent with that rule of the House, but not to permit substantive alterations of special orders. Unanimous-consent requests for substantive alterations must be made in the House. *Manual* § 877a.

It is not in order to seek unanimous consent:

- To permit the Committee of the Whole to alter an order of the House (8 Cannon § 2323), or to entertain a proposition which is in order only in the House (Deschler Ch 23 §§ 39.12, 48.15, 48.16). See also *Manual* § 877a.
- To excuse a Member from voting in the Committee of the Whole. 89–1, Mar. 26, 1965, p 2096.
- To permit a Member to have his vote recorded after the announcement of the result. 86–1, Mar. 12, 1959, p 4039; 92–1, Mar. 17, 1971, p 6809.
- To revise and extend arguments in the *Congressional Record* on points of order (it being essential that the Chair's ruling be responsive to arguments actually made). 98–1, Nov. 2, 1983, p 30545.
- To insert in the Record a colloquy between Members that did not actually occur. *Manual* § 929.

Requests Denied at the Speaker's Discretion

The Speaker may decline to recognize for a unanimous-consent request which is improper or inappropriate under the particular circumstances, as where proper notice cannot be given to interested Members. Deschler Ch 23 §§ 48.2 *et seq*. He may do so pursuant to his discretionary power to rec-

ognize Members. Deschler Ch 23 § 42. Thus the Speaker may decline to recognize for a unanimous-consent request:

- To permit a Member to address the House on a private bill being considered on the Private Calendar. Deschler Ch 23 § 48.8.
- To permit the House to rerefer a bill to a committee whose chairman has not been consulted on the matter. Deschler Ch 23 § 48.5.
- To consider a measure after the Members have been informed that there will be no further legislative business for the day. Deschler Ch 23 §§ 48.6, 48.7.
- To direct the clerk of a committee, without its approval, to bring to the well of the House certain documents in the custody of that committee. Deschler Ch 23 § 48.4.
- For a second ''one-minute'' speech on the same day.

§ 10. Reconsideration; Modification or Revocation of Agreement

An agreement entered into by unanimous consent may be modified or vacated by unanimous consent at the pleasure of the House. 7 Cannon § 946. Thus, by unanimous consent, the House may vacate a previous unanimous-consent agreement permitting all Members to revise and extend their remarks on a particular measure. 98–1, Nov. 15, 1983, p 32746. A unanimous-consent agreement may also be revoked pursuant to a majority vote on a resolution reported from the Committee on Rules as to the order of business. 8 Cannon § 3390.

The motion to reconsider is applicable to a determination made pursuant to a unanimous-consent agreement. 8 Cannon § 2794.

It has been held that a so-called ''gentleman's agreement''—that is, a unanimous-consent agreement *not* to take up a bill during a particular period—is not subject to subsequent revision, even by unanimous consent. Such agreements are said to be observed ''with scrupulous care,'' especially when Members have left the floor with the understanding that the bill will not be considered in their absence. 6 Cannon § 710a.

Unfinished Business

Research References
4 Hinds §§ 3112–3114, 4735, 4736
6 Cannon §§ 740, 741
6 Deschler Ch 21 § 3
Manual §§ 631, 878, 885–888

§ 1. In General

Unfinished business is business that has come over from a previous day and is in order immediately after disposition of business on the Speaker's table under Rule XXIV clause 1, which sets forth the daily order of business in the House. See also *Manual* § 879. The resumption of unfinished business at this time may be preempted by business of higher privilege, such as a motion to discharge on discharge days. Deschler Ch 21 § 3. Unfinished business may not be called up under Rule XXIV clause 1 if the order of business under that rule has been supplanted, as it often is for days at a time, by House order. See ORDER OF BUSINESS.

The Speaker has the discretionary authority under Rule I clause 5(b), as amended in 1995, to postpone certain questions and to ''cluster'' them for voting at a designated time or place in the legislative schedule. The postponement authorized by the rule must be to a time within two legislative days, with the exception of questions relating to the approval of the Journal, which may be postponed only to a time on the same legislative day. *Manual* § 631. Once announced the Chair may redesignate the time for taking postponed votes within the permissible period. 98–2, June 6, 1984, p 15080. If the House adjourns before all of such questions are determined, they are disposed of as unfinished business on the next following legislative day. *Manual* § 631. Generally, see VOTING.

Certain categories of business are called up automatically when suspended until a designated time. An example is the consideration of a veto

message postponed to a day certain (91–2, Jan. 28, 1970, p 1483) and votes postponed under Rule I clause 5. Generally, however, unfinished business coming over from a previous day does not automatically come before the House for consideration but must be called up by a Member in charge. Deschler Ch 21 § 3.

If the matter called up as unfinished business was under debate at the time of the interruption, debate does not begin anew but recommences from the point where it was interrupted. 96–2, June 10, 1980, p 13801; 103–1, Sept. 23, 1993. p ____.

§ 2. Business Unfinished at Adjournment

A House rule provides that, with certain exceptions, business pending and unfinished at adjournment is to be resumed—after business on the Speaker's table is finished—and at the same time each day thereafter until disposed of. Rule XXIV clause 3. *Manual* § 885. See also Rule I clause 5(b)(4).

Ordinarily, under Rule XXIV clause 3, any general legislative business that is unfinished at adjournment goes over to the succeeding day (*Manual* § 886), whereas motions that relate merely to the sequence or order of business do not. Thus, a motion relating to the order of business does not recur as unfinished business on a succeeding day, even though a vote had been ordered on it. 4 Hinds § 3114. Likewise, the question of consideration, when not disposed of at an adjournment, does not recur as unfinished business on a succeeding day (5 Hinds §§ 4947, 4948), but may be raised anew on a subsequent day when the matter is again before the House (8 Cannon § 2438). Also excepted from the operation of Rule XXIV clause 3 are those special classes of business that are in order only on days of the week designated by House rule. See § 4, infra.

§ 3. — Where Previous Question Ordered

If the House adjourns without voting on a proposition on which the previous question has been ordered, the question comes up as unfinished business on the next legislative day. 5 Hinds §§ 5510–5517; 8 Cannon § 2691. The previous question having been ordered on a matter, its consideration on the succeeding day becomes preferential and may supersede action on other business even though privileged. Thus, a simple resolution coming over from the preceding day with the previous question ordered was held to take precedence over a motion to dispose of a veto message from the President. 8 Cannon § 2693.

§ 4. — On Days Designated for Special Classes of Business

Consistently with Rule XXIV clause 3, where the business unfinished at adjournment belongs to a class of business that is in order only on certain days, it is not taken up again until the next day eligible for the call of the appropriate calendar or for that class of business. 8 Cannon § 2334; Deschler Ch 21 § 3. This practice is followed with respect to:

- Private bills considered on certain Tuesdays. See PRIVATE CALENDAR.
- Matters considered at the Calendar Wednesday call of committees. See CALENDAR WEDNESDAY.
- District of Columbia bills on certain Mondays. See DISTRICT OF COLUMBIA BUSINESS.
- Bills brought up under the rule setting apart days for motions to suspend the rules. See SUSPENSION OF RULES.
- Bills brought up under the rule setting apart days for motions to discharge committees. See DISCHARGING MEASURES FROM COMMITTEES.

§ 5. Voting as Unfinished Business

When a vote is postponed or when a quorum fails to vote on a question and the House adjourns, the vote may recur as unfinished business on the following day. Deschler Ch 21 § 3. Votes postponed by the Speaker under Rule I clause 5, see § 1, supra. Votes on unfinished business are put de novo, if previously postponed, and Members have the same rights as when the question was first put unless the yeas and nays were ordered before postponement. 89–1, Oct. 7, 1965, p 26243. Thus, when a vote is postponed pursuant to Rule I clause 5, having been objected to for lack of a quorum when initially before the House, the yeas and nays or a recorded vote may be demanded when the vote recurs as unfinished business. 96–2, Feb. 28, 1980, p 4305. See VOTING.

§ 6. Business Postponed to a Day Certain

Where a measure before the House is postponed to a day certain, either by motion or by unanimous consent, the measure becomes the unfinished business on the day to which postponed. Deschler Ch 21 § 3. This practice is followed with respect to postponed conference reports (91–2, Dec. 15, 1970, p 41544) and to veto messages that are postponed to a day certain (Deschler Ch 21 § 3.37). See also POSTPONEMENT.

§ 7. In Committee of the Whole

Business unfinished when the Committee of the Whole rises remains unfinished, to be considered first in order when the House next goes into

Committee of the Whole to consider that business. 4 Hinds § 4735. The House and not the Committee of the Whole controls resumption of consideration. The Chairman of the Committee of the Whole will not entertain unanimous-consent requests to fix the time of resumption of consideration of the bill. 99–1, June 26, 1985, p 17450.

When the House resolves into Committee of the Whole for the consideration of a bill on which reading for amendment was begun on the previous day, the regular order is the reading of the bill. 8 Cannon § 2336.

Veto of Bills

Research References
4 Hinds §§ 3520–3552
7 Cannon §§ 1094–1115
7 Deschler Ch 24 §§ 17–23
U.S. Const. art. I § 7
Manual §§ 104, 107–109, 112–114

§ 1. In General; Veto Messages

Generally

The authority for the President to disapprove—veto—a bill is spelled out in the Constitution, U.S. Const. art. I § 7 clause 2. The same clause addresses the process by which the Congress can override a veto.

> Every bill which shall have passed the House of Representatives and the Senate, shall, before it become a law, be presented to the President of the United States; If he approve he shall sign it, but if not he shall return it, with his objections to that House in which it shall have originated, who shall enter the objections at large on their Journal, and proceed to reconsider it. If after such reconsideration two thirds of that House shall agree to pass the Bill, it shall be sent, together with the objections, to the other House, by which it shall likewise be reconsidered; and if approved by two thirds of that House, it shall become a law. . . . If any bill shall not be returned by the President within ten days (Sundays excepted) after it shall have been presented to him, the same shall be a law, in like manner as if he had signed it, unless the Congress by their adjournment prevent its return, in which case it shall not be a law.

The President has a 10-day period in which to approve or disapprove a bill. He can sign the bill into law or he can return it to the House of its origination with a message detailing why he chooses not to sign. If he fails to give his approval by affixing his signature during that period, the bill will become law automatically, without his signature. However, if before

the end of that 10-day period the Congress adjourns *sine die* and thereby prevents the return of the bill, the bill does not become law if the President has taken no action (i.e., approval) regarding it. At this stage, the bill can become a law only if the President signs it. The President's failure to act under these circumstances is referred to as a ''pocket'' veto. Deschler Ch 24 § 17. Pocket vetoes, see § 7, infra.

The 10-day period given the President under the Constitution in which to approve or reject a bill may be considered as beginning at midnight on the day on which the bill is presented to him. The day on which the bill is presented to the President is not counted in the computation (Deschler Ch 24 § 17.1) nor are Sundays.

Under the usual practice, bills are considered to have been ''presented to the President'' at the time they are delivered to the White House. But bills have been delivered to the White House while the President was abroad and effectively held by the White House for presentation to the President upon his return to the United States. *Manual* § 105.

Where the President exercises his veto authority he returns the enrollment with a sealed message setting forth his objections. An enrolled House bill returned to the Clerk during a recess with a ''memorandum of disapproval'' setting forth the objections of the President has been treated by the House as a return veto. 102–1, Sept. 11, 1991, p ____.

§ 2. House Action on Vetoed Bills

Veto messages are laid before the House on the day received by the Speaker. They are then read and entered in the Journal. 89–1, Sept. 13, 1965, p 23623; 91–2, Aug. 11, 1970, pp 28170–72.

A veto message of a House bill having been laid down and read, the Speaker first announces:

> The objections of the President will be spread at large upon the Journal and the message and bill will be printed as a House document.

If the House does not wish to proceed immediately to reconsider the bill, the motions to lay on the table, to postpone consideration or to refer are available at this point in the proceedings. See § 4, infra.

When the message is laid before the House, the question on passage is considered as pending—so that no motion from the floor to reconsider the bill is necessary. 7 Cannon §§ 1097–1099. However, the previous question cannot be moved on reconsideration until the question is stated by the Chair. If the House wishes to proceed to the consideration of the message and address the question of passing the bill over the President's veto, it can

defeat any preferential motion which is offered and proceed to the main issue.

If no preferential motions are offered, the Chair then states the question as follows:

> The pending question is whether the House will, on reconsideration, pass the bill, the objections of the President to the contrary notwithstanding.

§ 3. — Consideration as Privileged

The consideration of a veto message from the President is a matter of high privilege, and may interrupt consideration of other business (such as a conference report) if the previous question has not been ordered. 95–2, Oct. 5, 1978, p 33704. Though its consideration may be postponed to a day certain, it remains highly privileged and becomes the unfinished business on that day. 91–2, Jan. 27, 1970, p 1365. A vetoed bill may be laid on the table (7 Cannon § 1105), but it is still highly privileged and a motion to take it from the table is in order at any time (4 Hinds § 3550; 5 Hinds § 5439). A vetoed bill received in the House by way of the Senate is considered as if received directly from the President and supersedes the regular order of business. 4 Hinds § 3537; 7 Cannon § 1109. The privilege accorded vetoed bills does not extend to a bill reported in lieu of a vetoed bill. 4 Hinds § 3531; 7 Cannon § 1103.

Though highly privileged, the consideration of a vetoed bill yields to:

- A timely demand for a quorum. 4 Hinds § 3522; 7 Cannon § 1094.
- Unfinished business from the preceding day with the previous question ordered. 8 Cannon § 2693.
- A matter being considered as a question privileged under the Constitution, such as a contested election. 5 Hinds § 6642.
- A motion to adjourn. 4 Hinds § 3523.

§ 4. — Motions in Order

Generally

The constitutional mandate that ''the House shall proceed to reconsider'' a vetoed bill (U.S. Const. art. I § 7) means that the House shall proceed to consider it under the rules of the House, and that the ordinary motions under the House rules are in order. *Manual* § 108. The motions to lay the bill on the table, to postpone to a day certain, and to refer are in order; and they take precedence in the order named over the question of reconsideration (and possible override) of the bill until the previous question is ordered. A Member may not invoke the previous question on the question of

reconsideration as preferential where the Chair has not yet stated the question to be pending on overriding the veto. 95–2, June 28, 1978, p 19332. See also 7 Cannon § 1105.

Postponement

While the House usually takes immediate action on a veto message from the President, the consideration of the message may be postponed to a day certain by unanimous consent or by motion. 91–2, Jan. 27, 1970, p 1365; 94–1, Dec. 19, 1975, p 41880; 95–2, June 21, 1978, p 18311. The postponement may be for a few days (86–2, Feb. 23, 1960, p 3257) but has been for as long as eight months and into the next session of the same Congress (99–1, Dec. 17, 1985, p 37477). A Member moving to postpone further consideration of a veto message to a day certain is recognized to control one hour of debate on the motion. 91–2, Jan. 27, 1970, p 1365. Such a postponement is not in violation of the constitutional requirement that the House ''shall proceed to reconsider'' a vetoed bill. 100–2, Aug. 3, 1988, p 20278.

When consideration of a veto message is postponed to a day certain, it becomes unfinished business on that day, and may be voted on, referred to committee, or again postponed as the House determines. 98–1, Oct. 20, 1983, p 28618.

Referral to Committee

A veto message from the President may be referred to a committee by unanimous consent (89–1, Sept. 13, 1965, p 23623) or by motion (89–2, Oct. 11, 1966, p 26051; 90–1, Dec. 11, 1967, p 35754). Such a referral is in order in the House on a bill that the Senate has already passed over the President's veto. 94–2, Jan. 26, 1976, pp 374, 875.

A motion to refer a veto message to committee takes precedence over the question of reconsideration. 99–1, Mar. 7, 1985, p 4955; 98–1, Oct. 25, 1983, p 29188. But while the ordinary motion to refer may be applied to a vetoed bill, the motion is not in order pending the demand for the previous question or after it is ordered on the constitutional question of reconsideration. 7 Cannon § 1102.

Discharge of Committee

A motion to discharge a committee from the consideration of a vetoed bill is privileged (4 Hinds § 3532), under the modern practice can be debated under the hour rule (101–2, Mar. 7, 1990, p 3620) and is renewable every day, notwithstanding the tabling of a prior motion. 100–2, Aug. 10, 1988,

p 21589. When the motion to discharge is agreed to, the veto message is pending as unfinished business. *Manual* § 108.

§ 5. — Debate

Debate on the question of overriding the President's veto of a bill is under the hour rule. 91–2, Jan. 28, 1970, pp 1483, 1552; 91–2, June 25, 1970, pp 21529–32; 91–2, Aug. 13, 1970, pp 28758, 28779. The previous question may be moved at any time during the debate. 7 Deschler Ch 24 § 22. The Speaker normally recognizes the chairman of the committee or subcommittee which reported the bill to control the debate on the veto message. Compare 92–2, Aug. 16, 1972, p 28415.

§ 6. — Voting; Disposition of Bill

Under the Constitution, a vetoed bill becomes law when it is reconsidered and passed by the requisite two-thirds vote in each House. U.S. Const. art. I § 7. The two-thirds vote required to pass the bill is two-thirds of the Members voting, a quorum being present, and not two-thirds of the total membership of the House. 4 Hinds §§ 3537, 3538; 7 Cannon § 1111. The Constitution further requires that the vote on passage of a bill over the President's veto must be by the yeas and nays. 86–1, Sept. 10, 1959, p 18982; 86–2, July 1, 1960, pp 14451, 15183.

The motion to reconsider is not in order on the vote on the question of overriding a veto. 5 Hinds § 5644; 8 Cannon § 2778.

When a vetoed House bill is reconsidered and passed in the House, the House sends the bill and veto message to the Senate and informs that body that it passed by the constitutional two-thirds vote. See 86–2, July 1, 1960, p 15343; 91–2, June 25, 1970, pp 21529–32. When the House fails to pass a bill over the President's veto, the bill and veto message are referred to committee, and the Senate is informed of the action of the House. 7 Deschler Ch 24 § 23.

§ 7. Pocket Vetoes

Generally; Use After Final Adjournment

Under the Constitution, if the President neither signs nor returns a bill within 10 days (Sundays excepted) it becomes law as if he had signed it, unless Congress by its adjournment ''prevents its return.'' U.S. Const. art. I § 7. The President is said to ''pocket veto'' a bill where he takes no action on the bill during the 10-day period and where the Congress adjourns before the expiration of that time in such a manner as to prevent the return of the

bill to the originating House. 7 Deschler Ch 24 § 18. If Congress, at the end of a two-year term, adjourns *sine die* within the 10-day period, the return of the bill is prevented within the meaning of this provision of the Constitution; therefore, if the President does not sign it, the bill does not become law but dies as a result of the President's pocket veto. *The Pocket Veto Case*, 279 US 655 (1929), *dicta* at p 680. *Manual* § 112. A constitutional debate still lingers with respect to the conditions under which the President may exercise his pocket veto authority during certain types of adjournment of a Congress. The executive and legislative branches have sometimes held different perspectives with respect to the conditions surrounding an adjournment and their impact on the return of a bill disapproved by the President.

During Intersession Adjournments

The Supreme Court has held that the President's return of a bill to the originating House was prevented when the Congress adjourned its first session *sine die* fewer than 10 days after presenting the bill to him for his approval. Because neither House was in session to receive the bill, the President was prevented from returning it, and a pocket veto was upheld. *The Pocket Veto Case*, 279 US 655 (1929). A more recent appellate court decision suggested that the return of a bill during an adjournment between sessions was not prevented within the meaning of the Constitution if the originating House has appointed an agent for the receipt of Presidential veto messages, and that the validity of a pocket veto is governed not by the type or length of adjournment but whether the conditions surrounding the adjournment raise an impediment to the actual return of the bill. *Barnes* v *Kline*, 759 F2d 21 (D.C. Cir. 1985), vacated as moot by the Supreme Court in *Burke* v *Barnes*, 479 US 361 (1987). In 1989, as part of the concurrent resolution providing for the *sine die* adjournment of the first session, the Congress affirmed its position that an intersession adjournment does not prevent the return of a bill where the Clerk and the Secretary of the Senate are authorized to receive messages during the adjournment. H. Con. Res. 239, 101–1, Nov. 21, 1989, p ____. When the second session of the 101st Congress convened, the House asserted its right to reconsider a bill returned with a Presidential ''memorandum of disapproval'' received during the *sine die* adjournment. See 101–2, Jan. 23, 1990, p ____. Under the standing rules of the House since the 97th Congress, the Clerk has been authorized to receive messages from the President at any time that the House is not in session. Rule III clause 5. *Manual* § 647b.

During Intrasession Adjournments

An adjournment of Congress during a session does not prevent the President from returning a bill which he disapproves so long as appropriate arrangements are made by the originating House for the receipt of Presidential messages during the adjournment. Thus, it has been held that a Senate bill cannot be pocket-vetoed by the President during an ''intrasession'' adjournment of Congress to a day certain for more than three days, where the Secretary of the Senate has been authorized to receive Presidential messages during such adjournment. *Kennedy* v *Sampson,* 511 F2d 430 (D.C. Cir. 1974). See also *Kennedy* v *Jones,* 412 F Supp 353 (D.D.C. 1976). The Supreme Court has held that the adjournment of the House of origin for not exceeding three days while the other branch of the Congress remained in session, did not prevent a return of a vetoed bill to the House of origin. *Wright* v *U.S.*, 302 U.S. 583 (1938).

Voting

A. GENERALLY

B. ROLE OF THE CHAIR; DUTIES

C. RIGHTS AND DUTIES OF MEMBERS

D. NONRECORDED VOTES

E. VOTES OF RECORD

F. VOTING PERIODS; TIME LIMITATIONS

Research References

U.S. Const. art. I §§ 5, 7
5 Hinds §§ 5925–6105
8 Cannon §§ 3065–3162
Manual §§ 76–80, 629–632, 656–660b, 765–774b, 934, 939

A. Generally

§ 1. In General; Kinds of Votes

Generally

The rules of the House identify four methods of voting that are of regular use:

- Voice votes [under Rule I clause 5(a)] in which Members express their voting preference simply by calling out ''Aye'' or ''No'' in unison.
- Division votes [Rule I clause 5(a)], in which Members stand to be counted as either for or against a proposition.
- Yea and nay votes, the demand for which requires the support of one-fifth of the Members present (under Article I, § 5 of the Constitution) or which are ordered ''automatically'' when a Member objects to a pending vote on the ground that a quorum is not present (under Rule XV clause 4). Yea and nay votes are usually taken by electronic device.
- Recorded votes [under Rule I clause 5(a)], which require the support of one-fifth of a quorum. Recorded votes are taken in the same manner as the yeas and nays.

When the House is operating in the Committee of the Whole, all of these commonly used methods of voting are available except for the yeas and nays, a procedure used only in the House. A recorded vote may be ordered in the Committee of the Whole when the demand is supported by at least 25 Members [Rule XXIII clause 2(b)]. It is not in order in the Committee of the Whole for a Member to ''object to the vote on the ground that a quorum is not present and make a point of order that a quorum is

not present'' (Rule XV clause 4), since the ''automatic call'' is also a yea and nay vote.

Sometimes these voting methods are used in various combinations, one after the other, depending on the circumstances. Any Member feeling that the announced result of a voice vote is unsatisfactory may ask for the Chair to take a division vote; and if this result is challenged, a vote of record may be demanded.

Less frequently used but still available on a stand-by basis are (1) roll call votes, in which each Member's response is given orally as the Clerk calls the roll in alphabetical order (Rule XV clause 1); and (2) votes by tellers with clerks, in which each Member fills out and signs a vote tally card and submits it to a designated clerk teller [Rule I clause 5(a)].

Votes on certain issues are required by House rule to be taken by the yeas and nays. When the Speaker puts the question on final passage of general appropriation bills, on budget resolutions or bills increasing Federal income tax rates, the vote must be taken by the yeas and nays (Rule XV clause 7) and the Constitution requires that the question of passing a bill over the veto of the President must also be by the yeas and nays (Article I § 7). The vote to close a conference committee meeting is also required to be taken by roll call. [Rule XXVIII clause 6(a).]

All votes are in order only when the Chair puts the question. Unauthorized votes, as where a Member asks for a ''straw'' vote or a ''show of hands'' are not in order. 95–1, Apr. 27, 1977, p 12548.

Voting in Committees, see COMMITTEES.

Voting by Ballot

Voting on an election in the House by ballot, although authorized by Rule XXXVIII, is largely obsolete. *Manual* § 934. There has been no instance of voting by ballot under this rule since 1868, when the managers of an impeachment proceeding were elected by ballot. 3 Hinds § 2417.

§ 2. The Electronic Voting System

In General

In 1973, an electronic voting system was installed in the House Chamber pursuant to the Legislative Reorganization Act of 1970 and to amendments to House Rule XV (*Manual* § 774b). The purpose of this system was to reduce the time needed to process roll call votes and quorum calls. Under this system, the lengthy roll call of Members and votes by cards with clerks are replaced by a computerized device that simultaneously receives and records votes cast by Members using the system during the voting period.

A master computer accepts votes and processes voting information for subsequent retrieval.

Verification of Vote; Changing Votes

A Member may verify that his vote has been properly recorded by reinserting his card in an *Open* vote station. (Illumination of the button corresponding to the last vote preference will indicate that the vote has been recorded by the computer system.) In one instance, where the voting system failed for one minute, the Chair allowed Members additional time to check the board to verify whether or not their votes were recorded. 103–1, Sept. 29, 1993, p ____.

A Member may change his vote—if more than five minutes remain or on five-minute deferred votes—by simply depressing one of the other pushbuttons. Changes made with less than five minutes remaining during a 15-minute vote must be made in the well, as are votes cast after the voting stations have been closed but prior to the Chair's announcement of the result. 94–2, Mar. 22, 1976, p 7394; 95–1, Jan. 4, 1977, pp 53–70; *Manual* § 774b. Vote changes generally, see § 25, infra.

Effect of Malfunction

Where the electronic voting system malfunctions or becomes inoperative, the Chair may direct that all recorded votes and quorum calls be conducted pursuant to the standby procedures prescribed in Rules I and XV. 93–1, May 16, 1973, pp 15860, 15861; 93–1, July 17, 1973, p 24171; 93–1, July 18, 1973, p 24653. In such a case, the Chair may direct the Clerk to call the roll alphabetically. 93–1, May 16, 1973, pp 15860, 15861. If the electronic system becomes inoperative during a record vote, the Chair may direct that the vote be taken *de novo* by clerks. 93–1, June 16, 1973, pp 23971, 23972. Or he may announce that Members who had been recorded prior to the malfunction of the electronic device will be included in the new tally of those voting. 93–1, Dec. 21, 1973, pp 43285, 43288, 43292. When the system again becomes operative, its use resumes at the Chair's discretion. 93–1, July 19, 1973, p 24919.

Recorded votes may be taken by electronic device although the display panels showing the vote totals and the Members' names and votes are inoperative, since Members can verify votes either at the monitors or by reinserting their cards in the voting stations. 95–1, June 6, 1977, p 17484; 95–2, June 21, 1978, p 18260; 99–1, Sept. 19, 1985, p 24245. A malfunction of the monitor at the majority or minority table will not prevent utilization of the electronic system where an alternate use of another monitor can be made. 93–2, Aug. 7, 1974, p 27219.

§ 3. Prohibitions Against Voting by Proxy or for Absent Members

Whether in the House or Committee of the Whole, Members must vote in person. 7 Cannon § 1014; *Manual* § 660b. No one other than a Member may cast a vote or record a Member's presence. A Member may not cast a vote on behalf of another Member, and an authorization to cast a Member's vote is forbidden by House rule. Rule VIII clause 3. *Manual* § 660b. It also has been held that one Member may not authorize another to enter his signature on a motion to discharge. 7 Cannon § 1014.

The use of an electronic voting card belonging to a Member who is *in absentia*—sometimes referred to as ''ghost voting''—is considered a serious ethics infraction, and a Member's participation in such activity, either by direction or by subsequent acquiescence or ratification, is a matter warranting sanction by the House. In one recent case, the Committee on Standards of Official Conduct concluded that a Member had permitted such voting to occur; it found that while the evidence did not clearly demonstrate that the Member had concurrent knowledge that votes were cast in his name, he failed to take steps necessary to prevent unauthorized use of his voting card or to disavow votes that were cast in his name. H. Rept. No. 100–485. A resolution reprimanding the Member was agreed to by the House. 100–1, Dec. 18, 1987, p 36274.

B. Role of the Chair; Duties

§ 4. In General; Putting the Question

An essential step in bringing a pending proposition to a vote occurs when the Speaker or Chairman states and then puts the question as prescribed by the rules of the House. See Rule I clause 5; *Manual* § 629. The question, if in order, must be put (2 Hinds § 1312), it being Jefferson's view that it is a breach of order for the Speaker to refuse to put a question which is in order (*Manual* § 304).

A question may be put to a vote only by the Chair; it is not in order for a Member having the floor to usurp the role of the Chair in this regard, as by asking for a demonstration of support before the question is put. 95–1, Apr. 27, 1977, p 12548. The proposition as stated by the Chair in putting the question, and not as stated by the sponsoring Member, is the proposition voted upon. 6 Cannon § 247; 88–1, Dec. 4, 1963, p 23305.

Putting the question on engrossment and third reading on the passage of bills and joint resolutions is required by Rule XXI clause 1 (*Manual* § 830). However, where existing law requires the vote to occur on final pas-

sage immediately following the conclusion of general debate, the Speaker puts the question on final passage without putting the question on ordering the previous question or on engrossment and third reading. 99–1, Apr. 23, 1985, p 9085. The intent of such laws is to prevent intervening motions and questions once general debate has concluded, and to require an immediate vote on final passage. 99–1, Mar. 26, 1985, pp 6345, 6346.

§ 5. Voting by the Chair

Right to Vote

The Speaker has the same right to vote as other Members, and historically he has exercised this right even in contravention of early House rules attempting to limit his voting authority. 5 Hinds §§ 5964, 5966. See also *Manual* § 632. He may vote ''aye'' or ''no'' at any time prior to the final announcement of the vote. 92–1, Apr. 6, 1971, p 9785. On an electronic vote, the Speaker directs the Clerk to record his vote and verifies that instruction by submitting a vote card. 101–2, Oct. 17, 1990, p ____. On roll call votes by the yeas and nays, the Speaker's name is not called except at his request, and then at the end of the roll. *Manual* § 632. Members other than the Speaker who are occupying the Chair vote by submitting a voting card to the Clerk who then enters the vote.

In the early history of the House, Speakers exercised the right to vote sparingly. In more recent Congresses, it has become more common for Speakers to vote, especially on important legislation. See 5 Hinds § 5964 (note).

Duty to Vote

The Speaker is not required to vote ''except where his vote would be decisive. . . .'' Rule I clause 6. *Manual* § 632. The Speaker may vote to make a tie and thus defeat a measure. 88–1, Aug. 22, 1963, p 15589; 89–1, Sept. 21, 1965, p 24635; 90–1, Aug. 24, 1967, pp 23918, 23926. Or he may vote to break a tie and so decide a question in the affirmative. 8 Cannon § 3100.

§ 6. Chair's Responsibility as to the Count

One of the responsibilities of the Speaker is to count the number of Members rising in support of, or against, a pending proposition, as where a vote is taken by division. The Chair has a duty to make a fair and honest count in such cases; one of the suppositions on which parliamentary law is founded is that the Speaker will not betray his duty to make an honest count of the vote. 5 Hinds § 6002. The integrity of the Chair in counting a vote

is not subject to a direct challenge. 8 Cannon § 3115; 99–1, July 11, 1985, p 18550. Appeals may not be taken from the Chair's count of the number rising to demand a vote. 8 Cannon § 3105; 94–2, June 24, 1976, p 20390. Nor will an appeal lie from a count of those supporting the demand for the yeas and nays (95–2, Sept. 12, 1978, p 28950) or from a decision refusing recapitulation of a vote (8 Cannon § 3128). The remedy of a Member dissatisfied with the Speaker's count of Members rising, as on a division vote, is to demand a vote of record. 8 Cannon §§ 3115–3118.

C. Rights and Duties of Members

§ 7. In General; Duty to Vote

The casting of a vote (or the refusal to cast a vote) is the responsibility of the individual Member. Although the rules state that Members ''shall vote on each question put . . .'' (Rule VIII clause 1), in practice the House does not enforce this provision. *Manual* § 658. The Speaker has no power to compel a Member to vote (5 Hinds § 5942) and House actions to compel a Member to cast a vote have been uniformly unsuccessful. 5 Hinds §§ 5943–5948. By the same token, the House does not excuse a Member from voting. And a unanimous-consent request in the Committee of the Whole to excuse a Member from voting is out of order. 89–1, Mar. 26, 1965, p 6096.

§ 8. Disqualification to Vote

Generally; Conviction of Crime

The precedents suggest that the House has no authority to deprive a Member of his inherent right to vote. 5 Hinds §§ 5952, 5966, 5967; 8 Cannon § 3072; *Manual* § 658.

The Code of Official Conduct provides that a Member who has been convicted of a crime for which a sentence of two or more years' imprisonment may be imposed ''should'' refrain from voting in the House or Committee of the Whole until reinstatement of the presumption of his innocence or until he is reelected to the House. Rule XLIII clause 10. *Manual* § 939. The term ''conviction'' in clause 10 is construed to include a plea of guilty or a certified finding of guilt even though sentencing may occur later. H. Rept. No. 94–76.

Personal or Pecuniary Interest

Rule VIII provides that a Member is not required to vote where he has a ''direct personal or pecuniary'' interest in the question. *Manual* § 657. In rare instances the Speaker has ruled that a Member, because of his personal interest in the outcome, should not vote. 5 Hinds §§ 5955, 5958. But ordinarily the Member himself—and not the Chair—determines this question. 5 Hinds §§ 5950, 5951; 8 Cannon § 3071; 94–1, Dec. 2, 1975, p 38135; 96–1, Mar. 1, 1979, p 3748. The Speaker will not entertain a point of order challenging the personal or pecuniary interest of Members in a pending question, and will defer to the judgment of each Member as to the directness of his interest. 92–2, June 27, 1972, p 22554. See also 96–1, Mar. 1, 1979, p 3748.

A Member may disqualify himself from voting on a measure because of a pecuniary interest in the measure being considered. Thus, where a bill was pending relating to the reserves required to be maintained by certain banks, a Member disqualified himself on the vote because of a pecuniary interest in the matter. 86–1, July 1, 1959, p 12504. In one case, a Member announced a disqualifying personal interest in a pending bill and stated his intention to vote ''present'' on the issue. 90–2, Sept. 9, 1968, pp 26038, 26042.

Where the subject of a vote before the House affects an entire class, the personal interest of Members who belong to the class is not such as to disqualify them from voting. 5 Hinds § 5952. In one instance for example, during consideration of a bill providing financial assistance to states and political subdivisions, the Speaker indicated that the bill was sufficiently general in scope that Members holding municipal bonds or who had other financial interests dependent on the fiscal affairs of a particular city would merely be within a class of similarly situated individuals whose pecuniary interest would not be so direct as to preclude them from voting on the bill. 94–1, Dec. 2, 1975, p 38135.

D. Nonrecorded Votes

§ 9. In General; Voice Votes

Votes not of record are those in which no official public record is required of the names or votes of the participating Members. There are two types of nonrecorded votes: voice votes and votes by division. See Rule I clause 5. *Manual* § 629. Authority for teller voting, a more elaborate proce-

dure for taking a nonrecord vote, was eliminated from the rules in the 103d Congress. § 11, infra.

Voice votes are the simplest and most commonly used of all voting procedures. Such votes are based on the volume of sound produced by Members as they respond either ''aye'' or ''no'' to the question put by the Chair. 5 Hinds § 5926. See also *Manual* § 501. If the Chair is in doubt about the result, or if any Member requests it, a division vote is in order. *Manual* §§ 501, 629. In a division vote, those in favor and then those opposed are asked to stand and be counted (§ 10, infra).

The Speaker must put the pending question to a voice vote under Rule I clause 5 prior to entertaining a demand for a recorded vote or the yeas and nays. 102–2, Mar. 9, 1992, p ____.

§ 10. Voting by Division

Generally; Form

A demand for a division (standing) vote is in order following the taking of a voice vote. 90–1, Sept. 20, 1967, pp 26120, 26122. Under Rule I clause 5, after a voice vote, if the Speaker is in doubt or a division is called for, ''the House shall divide; those in the affirmative of the question shall first rise from their seats, and then those in the negative. . . .'' *Manual* § 629. Only one demand for a vote by division on a pending question is in order. 98–2, July 26, 1984, p 21259.

MEMBER: Mr. Speaker, I demand a division.

CHAIR: A division is demanded. As many as are in favor will rise and stand until counted. . . .

The ayes will be seated and the noes will stand.

Timeliness

A demand for a division comes too late when the Member making it is not on his feet seeking recognition at the time the Chair announces the result of the voice vote. 92–1, July 30, 1971, p 398. However, the announcement of a voice vote does not preclude a subsequent demand for a division providing no intervening business has transpired and the proponent of the motion for division was on his feet seeking recognition at the time of the announcement. 87–2, Jan. 23, 1962, p 771; 90–1, Sept. 20, 1967, pp 26120, 26122.

Precedence of Demand for Recorded Vote or Yea and Nay Vote

When the Chair has put the question and is in doubt as to the result of a voice vote, a demand for a recorded vote takes precedence over a demand for a division vote. 95–1, Feb. 24, 1977, p 5349. However, following

a voice vote in the Committee of the Whole, the Chair has on his own initiative under Rule I clause 5 requested and conducted a division vote before entertaining a demand for a recorded vote. 95–1, Oct. 20, 1977, p 34717.

A demand for the yeas and nays in the House under article I section 5 of the Constitution takes precedence over a demand for a division under clause 5 of Rule I. 103–1, Mar. 29, 1993, p ____.

A demand for the yeas and nays may be made before or after a division vote, or even while a division vote is being announced. See 5 Hinds § 6039. But a demand for a division vote is not precluded by the fact that the yeas and nays have been refused. 8 Cannon § 3103; 92–1, Nov. 9, 1971, p 40054.

Interruptions During the Count

The Chair generally declines to recognize Members while he is counting those standing on a division vote. His count cannot be interrupted by a demand for a recorded vote. 94–1, June 10, 1975, p 18048. Parliamentary inquiries are entertained before (not after) the Chair asks those in favor of the proposition to rise. 89–2, Sept. 29, 1966, pp 24455–57. A conference report may not be presented while the House is dividing. *Manual* § 909. Messages are not received during a division. *Manual* § 562.

Since a vote by division takes no cognizance of Members present but not voting, the number of votes counted by division does not necessarily establish a lack of a quorum. 100–2, June 29, 1988, p 16504. Accordingly, the Chair may interrupt the count of Members standing in favor of a proposition in order to count for a quorum pursuant to a point of order that a quorum is not present. 97–2, Aug. 5, 1982, pp 19658, 19659.

§ 11. Teller Votes

Under the earlier practice of the House, a Member could demand a teller vote if supported by sufficient Members. 5 Hinds § 5986. In a teller vote Members cast their votes by passing through the center aisle to be counted by Member tellers. First the Members voting ''aye'' proceeded up the aisle and were counted, and then the Members voting ''no'' were counted. Vote totals were announced but not the vote of each individual Member. Teller votes were considered a more accurate vote-counting procedure than either voice votes or division votes, but fell into disuse because of the advent of the electronic voting system. The rule authorizing a demanded teller vote was abolished in 1993. H. Res. 5, Jan. 5, 1993. Teller votes and the Speaker's discretion, see § 18, infra.

E. Votes of Record

§ 12. Yea and Nay Votes; Recorded Votes

Yea and Nay Votes Distinguished

There are two primary methods of taking a vote of record in the House of Representatives. Voting by the yeas and nays is the preeminent method of voting in the House and is to be distinguished from recorded votes that are available under separate House rules. Yea and nay votes are made in order by the Constitution (U.S. Const. art. I § 5). Rule XV clause 4 orders the yeas and nays whenever a point of order is made that a quorum has failed to vote on a question put in the House (*Manual* § 774). Yea and nay votes are not in order in the Committee of the Whole. 4 Hinds §§ 4722, 4723; 94–1, Nov. 12, 1975, p 36147; 95–1, June 2, 1977, p 17292. Recorded votes, on the other hand, are available in both the House and the Committee of the Whole (*Manual* § 630a) and are taken pursuant to Rule I clause 5 (in the House) and under Rule XXIII clause 2(b) in the Committee.

Yea and nay votes are also to be distinguished from recorded votes in that demands for yea and nay votes require the support of only one-fifth *of those present* (§ 14, infra), whereas a recorded vote in the House requires the support of one-fifth *of a quorum*. Rule I clause 5. It is the Chair's statement of the demand, and not the Member's request, which controls whether one-fifth of those present or one-fifth of a quorum are required to support the demand. 97–1, Oct. 1, 1981, p 22760. In the Committee of the Whole 25 must stand to support the request for a recorded vote. Rule XXIII clause 2(b).

Demanding a Recorded Vote

Under the rules, a recorded vote is in order in the House or in the Committee of the Whole after the question has been put on a pending proposition if a demand or request for such a vote is made and if the request is supported by a sufficient number of Members:

> CHAIR: The question is on the amendment offered by the gentleman from _____.
>
> MEMBER: Mr. Speaker [or Mr. Chairman], I demand a recorded vote.
>
> CHAIR: The gentleman asks for a recorded vote. As many as are in favor of taking this vote by a recorded vote will stand and remain standing until counted.

A demand for a recorded vote in the House under Rule I clause 5 must be supported by at least 44 Members (one-fifth of a quorum). 94–1, Oct.

20, 1975, pp 33004, 33005. See also 92–1, Nov. 4, 1971, p 39352; 94–2, Sept. 21, 1976, p 31668. The count of Members standing to support a demand for a recorded vote is not subject to challenge by appeal. 94–2, June 24, 1976, pp 20390, 20391.

A request for a recorded vote must yield to the constitutional prerogative of a Member to demand the yeas and nays (§ 14, infra). But a request for a recorded vote may be made following a demand for the yeas and nays, if that demand is withdrawn or does not receive a sufficient second. 92–2, June 28, 1972, p 22981; 96–1, Oct. 30, 1979, p 508. Even the Member who has withdrawn a demand for the yeas and nays may himself request a recorded vote under clause 5, Rule I. 92–1, Nov. 4, 1971, p 39352. And where one-fifth of the Members present have refused to order the yeas and nays on a motion, and that motion later becomes the unfinished business of the House, a Member may still demand a recorded vote on the motion. 94–2, Sept. 21, 1976, pp 31640, 31641, 31668.

Timeliness of Demand for Recorded Vote; Interruptions

A request for a recorded vote is in order only after the Chair has put the question. 93–2, Aug. 2, 1974, p 33623. It cannot interrupt a voice vote or a vote by division which is in progress. 94–1, June 10, 1975, p 18048. The demand is timely where it is made before the announcement of the voice or division vote. The demand is not timely if the Member making it is not on his feet seeking recognition at the time that the result of the vote is announced by the Chair. 94–1, Sept. 25, 1975, p 30233; 97–1, July 9, 1981, p 15202. Thus, the demand for a recorded vote on the question of passage of a bill is not timely if the Member making the demand is not on his feet seeking recognition for that purpose when the Chair announces the result of a voice vote thereon and announces that the bill is passed. 95–1, Oct. 19, 1977, pp 34223, 34224. However, a Member's demand for a recorded vote may be made after the Chair announces the result of a division vote if no other business has intervened. 95–1, June 7, 1977, p 17703.

A demand for a recorded vote on an amendment comes too late after the amendment has been voted on and agreed to and the Chair has inquired as to the purpose of another Member rising. 98–1, July 21, 1983, p 20187. However, a mere inquiry relating to a pending motion, raised after the Chair has announced the result of a voice vote, does not constitute such intervening business as to preclude the right of a Member to demand a recorded vote on the pending motion. 98–2, May 23, 1984, p 13928; 98–2, July 26, 1984, p 21250. In one instance, without objection, the Speaker vacated the proceedings by which a bill was passed by voice vote so that a Member,

who had been on his feet seeking recognition, could demand a recorded vote on the passage of the bill. 98–2, June 6, 1984, p 15164.

Repetition or Renewal of Demand

Only one request for a recorded vote on a pending question is in order. Thus, a request for a recorded vote on a pending question having been refused, a second request is not in order following a division vote on that question. 94–2, Jan. 21, 1976, p 508. Likewise, where a recorded vote is refused following the Chair's announcement of doubt on a voice vote, and a division vote is then taken, the demand for a recorded vote may not be renewed. 95–1, Feb. 24, 1977, p 5349.

A similar rule is followed in the Committee of the Whole; where the Committee has refused a request for a recorded vote, the request may be renewed only by unanimous consent. 95–1, June 2, 1977, p 17292. A request for a recorded vote on an amendment once denied may not be renewed in Committee of the Whole even where the absence of a quorum is disclosed immediately following the refusal or where a quorum call has intervened. 96–1, June 6, 1979, p 13648; 97–1, July 16, 1981, p 16003; 98–1, Oct. 25, 1983, p 29227. However, while a request for a recorded vote once denied cannot be renewed following a quorum call in the Committee, the request remains pending where the Chair had interrupted its count of Members standing in support of the demand in order to count for a quorum. 97–2, Aug. 5, 1982, p 19658.

Withdrawal of Demand

A demand for a recorded vote may be withdrawn before the Chair begins to count Members supporting the demand, and unanimous consent is not required. 94–1, Sept. 17, 1975, p 38904. Withdrawal is likewise permitted without unanimous consent before the Chair has announced the count of Members standing in support of the demand. 95–2, Sept. 27, 1978, p 32058; 95–2, Oct. 14, 1978, p 38158.

Postponement of Vote

Unanimous-consent permission to postpone recorded votes in the Committee of the Whole must be obtained in the House and not in the Committee of the Whole. 103–1, June 28, 1993, p ____. Deferred votes, see § 23, infra.

§ 13. Ordering the Yeas and Nays

In General; When Required

The yeas and nays are usually in order only after they are demanded by a Member and the demand is supported by a sufficient number of Members. § 14, infra. But in some cases the yeas and nays are required by law or by House rule. Under the Constitution, a vote by the yeas and nays is required to pass a bill over the President's veto (U.S. Const. art. I § 7). See 4 Hinds § 3520; 7 Cannon § 1110. See also VETO OF BILLS.

The yeas and nays are to be ''considered as ordered'' when the question is put on certain measures such as bills providing general appropriations or income tax rate increases. Rule XV clause 7. And the yeas and nays are automatically ordered under the House rules when a vote has been objected to for lack of a quorum, thereby precipitating a simultaneous quorum call. § 16, infra. A vote by the yeas and nays is required to close a conference committee meeting under Rule XXVIII clause 6 (*Manual* § 913d). Such a vote may also be required by statute. See for example 19 USC § 1981 (Trade Expansion Program); 50 USC § 1545 (War Powers Resolution); 50 USC § 1622 (termination of national emergency).

Effect of Ordering

The ordering of the yeas and nays ordinarily brings the pending proposition to a vote but does not necessarily preclude all other business. A motion to adjourn may be admitted after the yeas and nays are ordered and before the vote has begun. 5 Hinds § 5366. A motion to suspend the rules and pass a bill has been entertained after the yeas and nays have been demanded on another matter. 5 Hinds § 6835. Consideration of a conference report (5 Hinds § 6457) or a motion to reconsider the vote by which the yeas and nays have been ordered (5 Hinds § 6029; 8 Cannon § 2790) has also been permitted to intervene.

Effect of Adjournment

An order for the yeas and nays remains in effect during an adjournment and is taken up whenever the bill again comes before the House. 5 Hinds §§ 6014, 6015; 8 Cannon § 3108. The House having reconvened, the question of consideration may not intervene so as to prevent a resumption of the yeas and nays. 5 Hinds § 4949. However, should a quorum fail to vote and the House adjourns, the question recurs *de novo* when the bill again comes before the House. 76–3, Oct. 10, 1940, pp 13534, 13535; 87–2, Oct. 13, 1962, pp 23474, 23475; 89–2, Oct. 19, 1966, p 27641.

§ 14. Demanding the Yeas and Nays

In General

A demand for the yeas and nays is in order after the question has been put to a voice vote (93–2, Oct. 2, 1974, p 33623), but a vote is taken only if a sufficient number of Members rise in support of the demand. Under the Constitution, the demand must be supported by one-fifth of the Members present. U.S. Const. art. I § 5. *Manual* § 75.

> MEMBER: Mr. Speaker, I demand the yeas and nays.
> SPEAKER: The yeas and nays are demanded. As many as are in favor of taking this vote by yeas and nays will rise and stand until counted.
> (*So many*) have risen, not a sufficient number, and the yeas and nays are refused. [*Or*] (*So many*) have risen, a sufficient number, and the yeas and nays are ordered.

In contrast to a demand for a recorded vote, which requires the support of one-fifth of a quorum (§ 12, supra), on a demand for the yeas and nays the Speaker need determine only whether one-fifth *of those present* sustain the demand. 5 Hinds § 6043; 8 Cannon §§ 3112, 3115. Thus, if there are only 10 Members in the Chamber, two Members rising in support of the demand are sufficient. Indeed, it is well-settled that a quorum is not necessary to the ordering of the yeas and nays. 5 Hinds §§ 6016–6028; *Manual* § 76.

In ascertaining whether one-fifth of those present support a demand for the yeas and nays, the Speaker counts the entire number present as well as those who rise in favor of the demand. 8 Cannon §§ 3111, 3120. A request for a rising vote of those opposed to the demand is not in order. 8 Cannon §§ 3112–3114. The Chair ordinarily first counts those supporting the demand and then counts the House; latecomers are included in the count until closed by the Chair. 101–2, Sept. 24, 1990, p ____. The Speaker's count of the House on this question is not subject to appeal. 95–2, Sept. 12, 1978, p 28949.

When in Order

The Speaker must put the question before a demand for the yeas and nays is in order. See 93–2, Oct. 2, 1974, p 33623. The demand is in order after the Speaker has put the question to a voice vote, is announcing the result of a division (5 Hinds § 6039), and even after the announcement of such a vote if the House has not passed on to other business (5 Hinds §§ 6040, 6041). But a demand for the yeas and nays comes too late after the Speaker has put the question on a motion, announced the result, and the House has proceeded to other business. 86–2, Apr. 25, 1960, p 17671; 89–

2, Apr. 28, 1966, p 9230. It is likewise untimely where the Chair has put a question to a voice vote, announced the result, and by unanimous consent laid the motion to reconsider on the table. 95–2, Oct. 13, 1978, p 36976.

Precedence of Demand

Being of constitutional origin, a demand for the yeas and nays in the House takes precedence over a demand for a vote of record under clause 5, Rule I. 92–2, June 28, 1972, p 22981. A demand for the yeas and nays in the House under the Constitution likewise takes precedence over a demand for a division vote under clause 5 of Rule I. 103–1, Mar. 29, 1993, p ____.

Demands as Dilatory; Repetition of Demand

The constitutional provision authorizing a demand for the yeas and nays is liberally construed; the demand may be made by any Member (8 Cannon § 3110), and cannot be denied merely on the ground that it is dilatory (5 Hinds § 5737; 8 Cannon § 3107). However, the yeas and nays having been once refused may not be again demanded on the same question. 5 Hinds § 6029. It is not in order during the various processes of a division vote to repeat a demand for the yeas and nays that has been rejected. 5 Hinds § 6030; *Manual* § 77. A demand for the yeas and nays having been refused, and tellers then having been ordered, a second demand for the yeas and nays was held not in order. 90–2, June 26, 1968, pp 18938–40.

Withdrawal

When the demand for the yeas and nays has been supported by one-fifth of the Members present, it is too late for the Member making the demand to withdraw it. 86–2, May 26, 1960, p 11304.

§ 15. Voting by the Yeas and Nays

In General

Under the earlier practice, yea and nay votes were cast in response to the Clerk's call of the roll of Members in alphabetical order. *Manual* § 765. Today, yea and nay votes are almost invariably cast by use of the electronic voting system, and need not be cast in alphabetical sequence. However, the Speaker has the discretion to have the Clerk call the roll for the yeas and nays (*Manual* § 774b). And the Speaker may, in his discretion, direct the Clerk to call the roll, in lieu of taking the vote by electronic device, where a quorum fails to vote on the question and objection is made for that reason. 93–1, May 16, 1973, p 15850.

Reconsideration

A motion to reconsider a vote ordering the yeas and nays (5 Hinds § 6029; 8 Cannon § 2790) or refusing the yeas and nays (5 Hinds § 5692) is in order. A yea and nay vote itself is likewise subject to reconsideration. If the House (by a majority vote) agrees to reconsider, the yeas and nays may again be ordered (by one-fifth of those present). 5 Hinds §§ 5689–5691. But if the House, having reconsidered, again orders the yeas and nays, a second motion to reconsider is not in order. 5 Hinds § 6037.

Disclosure of Member's Vote

A Member's vote, whether ''Yea,'' ''Nay,'' or ''Present,'' appears in the *Congressional Record* and, as required by the Constitution (U.S. Const. art. I § 5), in the House Journal. *Manual* § 75. However, there is no requirement that a Member's vote be announced publicly during the vote. 99–1, Sept. 19, 1985, p 24245.

§ 16. ''Automatic'' Yea and Nay Votes

On any vote in the House, the vote may be objected to for lack of a quorum under Rule XV clause 4, thereby precipitating a quorum call and a simultaneous ''automatic'' ordering of the yeas and nays. 95–2, Oct. 14, 1978, p 38553. That rule provides that ''whenever a quorum fails to vote on any question, and a quorum is not present and objection is made for that cause . . . there shall be a call of the House . . . and the yeas and nays . . . shall at the same time be considered as ordered.'' *Manual* § 773. An automatic call results under this rule when the objection that a quorum is not present and voting is made in the House after a voice vote. 6 Cannon § 697. An automatic call under this rule is not in order in Committee of the Whole. 89–2, Aug. 2, 1966, p 17844.

The Speaker may direct that an ''automatic'' vote in the House be taken by electronic device, or may, in his discretion, direct the Clerk to call the roll. 93–1, May 16, 1973, p 15860.

The automatic call and vote that ensues under Rule XV clause 4 when a quorum fails to vote is applicable whether the House is voting *viva voce* (6 Cannon § 697), by division (6 Cannon § 691), by tellers (4 Hinds § 3053), or by the yeas and nays (6 Cannon § 703), but does not apply when the House is voting on some question which does not require a quorum, such as a motion incidental to a call of the House. 4 Hinds § 2994; 6 Cannon § 681. While a quorum is not required to adjourn, a point of no quorum on a negative vote on adjournment, if sustained, precipitates a call of the House under the rule. 6 Cannon § 700; 82–1, June 15, 1951, p 6621.

See also QUORUMS.

§ 17. Roll Call Votes

In General

Because of the availability of the electronic voting system (§ 2, supra), roll call votes are rarely taken under the modern practice. Today roll call votes are ordinarily taken only during the process of electing a Speaker—where the responses are the surnames of those nominated (*Manual* § 312)—or in the event of a malfunction of the electronic voting system (98–1, July 13, 1983, p 18844). Nevertheless, the Speaker has broad discretionary power to invoke a roll call vote (*Manual* § 774b), and he may, in his discretion, direct the Clerk to call the roll, in lieu of taking the vote by electronic device, where a quorum fails to vote on any question and objection is made for that reason (93–1, May 16, 1973, p 15850).

The Clerk calls the roll of Members in alphabetical order by surname. The Speaker's name is called at the close of the roll. 5 Hinds § 5965. The roll is called twice—the second roll call being limited to those Members who failed to respond to the first call. A Member may cast his vote even after his name has been called provided the result of the vote has not been announced. 4 Hinds § 3052.

Interruptions

A motion to adjourn may be made before the roll call begins. 4 Hinds § 3050. And a roll call may be interrupted for the reception of messages (5 Hinds § 5602) and by the arrival of the hour fixed for adjournment *sine die* (5 Hinds §§ 6715–6718). However, a roll call may not be interrupted by:

- A motion to adjourn. 5 Hinds § 6053.
- A parliamentary inquiry. 5 Hinds § 6058; 8 Cannon § 3132.
- A question of personal privilege. 5 Hinds §§ 6058, 6059; 6 Cannon §§ 554, 564.
- The arrival of the hour fixed for another order of business. 5 Hinds § 6056.
- The arrival of the hour fixed for a recess. 5 Hinds §§ 6054, 6055; 8 Cannon § 3133.
- A conference report. 5 Hinds § 6443.

§ 18. Teller Votes With Clerks

''Tellers with clerks'' refers to a voting method adopted in 1971 to make it possible to record the votes of individual Members in the Committee of the Whole. *Manual* § 630a. Under this rarely used voting practice, the Chair has the discretion to order the Clerk ''to tell the names of those vot-

ing on each side of the question.'' Rule I clause 5(a). Each Member is given a tally card on which he enters his voting preference and his signature. The Members then deposit these cards in ballot boxes located in the Chamber.

Tellers with clerks as a voting method fell into disuse in 1972 with the adoption of the more efficient electronic voting system (see § 2, supra). Tellers with clerks remains as a stand-by procedure to be used only in the event of malfunction of the electronic system or in the event the Clerk is unable to call the roll.

§ 19. Pairing

General Pairs; Specific Pairs

A pair is an informal agreement between Members on opposite sides not to vote on a specified question or for a stipulated time during their anticipated absence from the House. Since the pairing Members are on opposite sides, their absences do not effect the result of the vote. Pairing permits Members to indicate their position with respect to a question even though they will not be present when the vote is taken. Pairs are not counted in vote totals, but their names are published in the *Congressional Record*.

Pairing is permitted in the House by Rule XV clause 1 and Rule VIII clause 2. In 1975, the House amended the latter rule to permit pairing in Committee of the Whole. See 94–1, Jan. 14, 1975, p 20.

Pairing is only permitted prior to the announcement of the result of the vote. *Manual* § 660a. After the Speaker has announced the result of a vote it is too late for a Member to announce a pair with an absent Member. 92–2, Oct. 5, 1972, p 34166.

A Member may arrange to be paired with another Member on the opposite side through contact with a pair clerk. Such clerks are floor employees designated by the party leaderships. Pairing Members may provide for the commencement and termination of the pair on specific dates, and may indicate if desired the stand of each Member on measures to be voted on. Or a Member may indicate that he wishes to stand ''with the Majority Leader'' in being paired with another Member. See 8 Cannon § 3077.

''Live'' Pairs

Live pairs involve an agreement between one Member who is present and voting and another on the opposite side of the question, who is absent. By agreement, the voting Member withdraws his vote and records himself as ''present.'' 91–1, Dec. 9, 1969, p 37996.

MEMBER: Mr. Speaker, on the vote just recorded I voted ''Aye'' (or ''No''). I have a pair with the gentleman from _____ and desire to change my vote and be recorded as ''Present.''

CHAIR: The Clerk will call the gentleman's name.

Such announcements must be made before the vote is finally declared. 92–2, Oct. 5, 1972, p 34166.

Enforcement and Construction of Pair Agreements

The House does not consider questions arising out of the breaking of a pair (5 Hinds § 5982), nor will it permit a Member to vote after the call on the ground that he had refrained from voting because of misunderstanding as to a pair (5 Hinds §§ 6080, 6081). Neither the Speaker nor the House exercises jurisdiction over pair agreements. 5 Hinds § 6095; 8 Cannon §§ 3082, 3085, 3087, 3089, 3093. The interpretation of the terms, provisions, and conditions of a pair rests exclusively with the contracting Members. The House does not construe them or consider questions or complaints arising out of their violation. 8 Cannon § 3085. Such questions must be determined by the interested Members themselves. 5 Hinds §§ 5981, 5982.

Correcting the Record

The failure of the *Congressional Record* to accurately record a pair is subject to correction just as any other error in the Record. 8 Cannon § 3079. A Member may, by unanimous consent, correct the Record where a pair is not properly listed. 88–1, Dec. 10, 1963, p 22820.

F. Voting Periods; Time Limitations

§ 20. In General; Fifteen-minute Votes

Generally

Members have a minimum of 15 minutes from the time of the ordering of a recorded vote to be in the Chamber. Rule I clause 5 (*Manual* § 630a) and Rule XV clause 5(b) (*Manual* § 774b). Members who are in the Chamber at the expiration of that time will be permitted to vote prior to the announcement of the result by the Chair. 92–1, July 27, 1971, p 27373. And the Chair has the discretion to allow additional time for Members to record their votes before announcing the result. 93–1, June 6, 1973, p 18403.

Although Members have a minimum of 15 minutes in which to record their votes on a vote taken by electronic device, the Chair has discretion to close the vote and to announce the result at any time after 15 minutes have elapsed. Thus, no point of order lies against the decision of the Chair

in his discretion to close a vote taken by electronic device after 15 minutes have elapsed. 95–2, Mar. 14, 1978, p 6839.

Voting Alerts; Bell and Light System

A legislative call system alerts Members to the taking of a vote as well as the kind of vote and the duration of the voting period. This system uses bells and lights that are activated through clocks located throughout the House and its adjacent office buildings. *Manual* § 765a. Members should not rely on signals relayed from outside the Chamber to assume that votes will be held open until they arrive. 104–1, Jan. 4, 1995, p ____. A mechanical malfunction of this call system does not result in the retaking of a vote except by unanimous consent (8 Cannon §§ 3153, 3154), and such failure does not permit a Member to be recorded following the conclusion of the call. *Manual* § 765a. In one instance, the Committee of the Whole agreed to a unanimous-consent request that a recorded vote on an amendment be vacated and that a new recorded vote be taken on the amendment, where it was alleged that erroneous clocks outside the Chamber and on the televised proceedings had misled Members as to the amount of time available. 98–1, May 3, 1983, p 10773.

§ 21. Five-minute Votes in the House; ''15-and-5'' Votes

Generally

Although 15 minutes is the usual time to respond to an order for a recorded vote in the House, the Speaker has discretionary power, under some circumstances, to reduce such time to five minutes. The rules of the House (Rule I and Rule XV) permit the Chair in his discretion to order five-minute votes:

- On an underlying question immediately following a roll call vote on ordering the previous question. *Manual* § 774bb.
- On additional questions on which the Speaker has postponed further proceedings immediately following a 15-minute vote on the first such postponed question. *Manual* § 631. Generally, see § 23, infra.
- On final passage of a measure immediately following a 15-minute recorded vote on a motion to recommit. *Manual* § 774bb.
- On second and subsequent separate votes in the House on amendments reported from the Committee of the Whole immediately following a 15-minute vote on the first such separate vote. *Manual* § 774bb.
- On a pending question immediately following a regular quorum call in Committee of the Whole. *Manual* § 863. See also § 22, infra.
- On any or all pending amendments immediately following a 15-minute recorded vote on the first such pending amendment in Committee of the Whole. *Manual* § 864a. See also § 22, infra.

These votes, often referred to as ''15-and-5'' votes, are in order before other business intervenes. Thus, under clause 5(b)(1) of Rule XV, the Speaker has discretion to conduct ''15-and-5'' voting after a roll call vote has been ordered on the previous question on a proposition if the question of adoption follows without intervening business. 103–1, Feb. 3, 1993, p ____.

By Unanimous Consent

The House may by unanimous consent authorize the Speaker to reduce the time to respond to a recorded vote. Under this practice, the response time may be set at two minutes (100–2, Oct. 4, 1988, p 28126), although five minutes is the more customary time agreed to. 98–2, June 21, 1984, p 17709. Thus, by unanimous consent, the House may permit a reduction of time to five minutes on a subsequent record vote by electronic device, if ordered, on an amendment reported from the Committee of the Whole on which a separate vote has been demanded. 98–1, Nov. 8, 1983, p 31502; 99–1, Oct. 8, 1985, pp 26665–67. And in one instance, by unanimous consent, the House reduced to five minutes the minimum time for a required record vote on a motion to close a conference meeting, to be made immediately following another record vote previously postponed. 98–1, Aug. 1, 1983, p 22029.

§ 22. Five-minute Votes in Committee of the Whole

Discretion of Chair

Although 15 minutes is the usual minimum time for Members to respond to an order for a recorded vote in the Committee of the Whole, the Chairman has the discretion, under some circumstances, to reduce such time to five minutes. In 1979, Rule XXIII was amended to give the Chairman the discretion to reduce to five minutes the period for a recorded vote following a regular 15-minute quorum call. *Manual* § 863. An announcement of a possible five-minute vote must be made by the Chair in advance under this rule. 98–1, May 4, 1983, p 11063.

In 1991, Rule XXIII was further amended to extend the discretionary authority of the Chair to order five-minute votes with respect to electronic votes on amendments pending in the Committee. Where an electronic vote is pending on two or more amendments, and the vote has been taken on the first pending amendment and there is no intervening business, the Chair may in his discretion reduce the time for voting on the remaining amendments to five minutes. Rule XXIII clause 2(c).

By Unanimous Consent

The Chairman of the Committee of the Whole has on rare occasions entertained a unanimous-consent request to reduce the minimum period of time for a recorded vote to five minutes. In one instance, by unanimous consent, the Committee permitted consecutive subsequent recorded votes, if ordered on divisible portions of an amendment, to be five-minute votes by electronic device, where no debate time remained on any portion of the amendment. 98–1, Nov. 8, 1983, p 31497. But the Chair will not entertain such a request under circumstances (such as where debate has intervened after a previous vote) where Members may have inadequate notice of the reduction in time for voting. 98–2, June 27, 1984, p 19126; 99–1, July 10, 1985, p 18423.

§ 23. Deferred or Clustered Votes

The Speaker has the discretionary authority under Rule I clause 5(b), as amended in 1995, to postpone certain questions and to ''cluster'' them for voting at a designated time or place in the legislative schedule, and, after the vote on the first such question, to reduce to five minutes the vote on all of the additional questions so postponed. *Manual* § 631. The rule specifically applies to the questions of:

- Approval of the Journal.
- Passing bills or adopting resolutions (or moving the previous question thereon).
- Agreeing to motions to suspend the rules.
- Agreeing to conference reports or to certain motions to instruct conferees (or moving the previous question thereon).

These categories are not mutually exclusive. For example, the Speaker may ''cluster'' a vote on the approval of the Journal with motions to suspend the rules. 103–1, Mar. 29, 1993, p ____.

For all such categories, the postponement authorized by the rule must be to a time within two legislative days, with the exception of questions relating to the approval of the Journal. Such questions may be postponed only to a time on the same legislative day. *Manual* § 631.

The discretionary authority of the Speaker to postpone votes under this rule arises after a vote of record is ordered or when a vote is objected to for lack of a quorum. *Manual* § 631. Thus, under this rule, the Speaker may postpone the vote on the question of passage of a bill, where the vote has been objected to on the grounds that a quorum is not present. 99–2, Oct. 9, 1986, p 30104. The authority of the Speaker to postpone such a vote does

not continue once a record vote has commenced or once the Speaker has announced the absence of a quorum. 98–1, July 13, 1983, p 18844.

Where the proposition does not fall within one of the categories listed by clause 5(b), the Chair does not have discretionary authority to order a five-minute vote but may do so by unanimous consent. 99–2, Oct. 6, 1986, p 28704. Thus, since procedural motions to postpone are not included among those propositions on which the Speaker is authorized to cluster a vote, the Speaker may, by unanimous consent only, postpone the vote on such a motion. 98–1, Aug. 1, 1983, p 21900.

Under clause 5 of Rule I, the Speaker has the discretion to reduce the time to five minutes only on ''clustered'' record votes following the first vote in the series; and the first vote must be a 15-minute vote. Compare 98–1, Nov. 8, 1983, p 31510. The Speaker will not entertain unanimous-consent requests to reduce the first postponed record vote in a series to five minutes unless Members are adequately notified and unless it immediately follows a 15-minute vote on a pending matter. See 98–2, July 24, 1984, p 20675; 99–1, Oct. 8, 1985, pp 26665–67.

Once announced the Chair may redesignate the time for taking postponed votes within the permissible period. 98–2, June 6, 1984, p 15080.

In exercising his authority under this rule, the Speaker may announce that the consideration of certain postponed questions may be interrupted by other privileged business. 97–1, Dec. 15, 1981, p 31506. And the ''clustering'' of record votes on postponed matters does not prevent the Chair from entertaining a unanimous-consent request between postponed votes. 98–1, Feb. 15, 1983, p 2175.

§ 24. Time to Cast Vote

It is not in order, even by unanimous consent, to permit Members to have their votes recorded after the announcement of the result. 86–1, Mar. 12, 1959, p 4039; 86–2, May 12, 1960, p 10206; 92–1, Mar. 17, 1971, p 6809. It is too late for a Member to cast a vote on a recorded vote after the Chair has announced the result of the vote (92–1, May 12, 1971, p 14584), even though the Member states that he was in the Chamber prior to the announcement (92–1, Sept. 30, 1971, p 34291). Similarly, a Member may not be recorded on a yea and nay vote after the result of the vote has been announced (87–2, Mar. 29, 1962, p 5438), even though he was present in the Chamber during the vote (90–1, July 18, 1967, p 19300).

G. Vote Changes, Corrections, and Announcements

§ 25. In General; Vote Changes

A Member who has voted may change his vote at any time before the final announcement of the result of the vote. 5 Hinds §§ 5934, 6093, 6094; *Manual* § 766. At that time a ''Present'' vote may be changed as well as an ''Aye'' or ''No'' vote. 5 Hinds § 6060. But a Member may not withdraw his vote without leave of the House. 5 Hinds § 5930.

Changes in votes cast are barred following the announcement of the result of the vote. 5 Hinds §§ 5931–5933; 8 Cannon § 3124; 92–1, Nov. 9, 1971, p 40062. A Member may not change his vote even by unanimous consent after the result has been announced. 99–2, June 17, 1986, p 14038.

Where a vote is being taken by electronic device, Members are permitted to change their votes by reinserting their voting cards in the voting stations during the first 10 minutes of 15-minute votes (or by announcement in the well after the Chair has asked for changes) or at any time during five-minute votes. Following the expiration of the minimum time for voting by electronic device and the closing of electronic voting stations, but prior to the Speaker's announcement of the result, any Member may either change his vote or cast an initial vote from the well by use of a ballot card. 94–1, Sept. 23, 1975, p 28951. See also § 2, supra.

Members who wish to change their votes on a recorded vote conducted by tellers with clerks may announce their vote change in the well prior to the announcement of the result. 93–1, July 11, 1973, pp 23156, 23161. If the correction is made prior to the announcement of the result by the Chair, unanimous consent is not required. 92–1, July 27, 1971, p 27374.

Where a Member changes his vote following a roll call and before the announcement of the result by the Chair, the change appears in the Record. This occurs even where the Member changes his vote twice, thereby reverting to his original voting stance. 91–1, Dec. 20, 1969, p 40456.

§ 26. Correcting the Record

Electronic Votes

The Speaker declines to entertain requests to correct the Journal and Record on votes taken by electronic device. The Chair presumes the technical accuracy of the electronic system if properly utilized and relies on the responsibility of each Member to correctly cast and verify his vote. *Manual* § 766; 93–1, Feb. 6, 1973, p 3558; 93–2, Dec. 3, 1974, p 37426. Recognition for such a request may be denied despite assurances by a Member that he had verified his vote by reinserting his card. 93–1, Apr. 18, 1973, p

13081. But the incorrect transcription by the official reporters of debates of a vote change announced in the well may be corrected in the Record by unanimous consent. 94–1, Sept. 24, 1975, p 30059.

The Speaker has declined to entertain a unanimous-consent request to correct a vote taken by electronic device although the Member was recorded as voting on a day when he was on leave from the House, no explanation having been offered for the discrepancy. 96–1, July 31, 1979, p 21660. For a report of the Committee on Standards of Official Conduct on voting anomalies, see H. Rept. No. 96–991, May 15, 1980.

Nonelectronic Votes

Where the electronic voting system is not in use, and a Member is incorrectly recorded on a roll call, he may correct his vote before the announcement of the result, with the corrected vote being properly recorded and the change duly noted in the Record. 87–1, Sept. 6, 1961, p 18256. *After* the announcement of the result of such a vote, while it is not permissible to change a vote, a Member may seek unanimous consent to correct the Record where his vote was incorrectly recorded or, though cast, was not recorded at all. 86–1, May 28, 1959, p 9335; 88–1, Sept. 10, 1963, p 16697. In entertaining such requests, the Chair does not pass judgment on the Member's explanation as to how he was improperly recorded or how, though present and having voted, he was not recorded, nor does he challenge the Member's word on how he voted during the roll call. See 86–1, May 29, 1959, p 9335. Indeed, when a vote actually given fails to be recorded during a call of the roll (5 Hinds §§ 6061, 6062), the Member may, before the approval of the Journal, demand as a matter of right that correction be made (5 Hinds § 5969; 8 Cannon § 3143). *Manual* § 766.

Members who have been incorrectly recorded on a nonelectronic vote taken by clerks pursuant to clause 5, Rule I have, by unanimous consent, had their votes corrected following the announcement of the result. 92–1, Mar. 18, 1971, p 7023. The Chair will not entertain such requests after further business has been transacted.

A Member, ascertaining that an absent colleague has been inadvertently recorded on a nonelectronic roll call vote, may have the vote deleted by unanimous consent, prior to the announcement of the result. 88–1, June 13, 1963, p 10871; 88–1, Aug. 12, 1963, p 14758.

§ 27. Recapitulations

A Member may not demand a recapitulation of a vote taken by electronic device. 94–1, July 30, 1975, p 25841. The recapitulation of such votes is refused because all Members may determine whether they were correctly

recorded by examining the display panel over the Speaker's rostrum (94–1, Sept. 17, 1975, p 28903) and because, even if the display panels are inoperative, individual votes and vote totals may be verified through the voting and monitoring stations (95–2, June 21, 1978, p 18260).

Record votes that do not involve the use of the electronic voting system are subject to recapitulation (5 Hinds §§ 6049, 6050) at the discretion of the Speaker (8 Cannon § 3128), either before or after the announcement of the result (8 Cannon § 3125). 86–1, Sept. 2, 1959, p 17752. See *Manual* § 765. But the Speaker may decline to entertain a request for a recapitulation of such a vote until after the announcement of the vote. 87–2, Oct. 12, 1962, p 23434. The greater the numerical difference between the vote totals, the greater the likelihood that the Speaker will decline to order a recapitulation. In one instance, the Speaker declined to order a recapitulation where the difference in the totals was as great as 10 votes (87–2, June 21, 1962, p 11383) but in another, the Speaker ordered a recapitulation where there was merely a three-vote difference (5 Hinds § 6050).

A Member may not change his vote on recapitulation if the result has been announced (8 Cannon § 3124), but errors in the record of such votes may be corrected (8 Cannon § 3125). Corrections of votes on recapitulation are made after the Clerk reads the names of the Members voting yea and again after the nays are read. 86–1, Sept. 2, 1959, p 17752.

§ 28. Announcements as to Voting Preference

A Member, having been absent for a recorded vote, may announce how he would have voted had he been present to vote. 86–1, May 20, 1959, p 8690.

> MEMBER: Mr. Speaker, on roll call 125, I was late getting here as a result of _____. Had I been present I would have voted ''aye.'' I ask unanimous consent that this statement appear in the Record following the announcement of the vote.

But neither the rules nor the practice permit a Member to announce after a record vote how absent colleagues would have voted if present. 6 Cannon § 200; *Manual* § 767.

H. Majority Votes; Super-majority Votes

§ 29. In General; Tie Votes

''The voice of the majority decides . . . where not otherwise expressly provided,'' wrote Jefferson, expressing a fundamental precept of parliamen-

tary law. *Manual* § 508. Most business that comes before the House is decided by a majority vote, and, by House rule, all questions relating to the priority of business are decided by a majority. Rule XXV. *Manual* § 900. Under a rule in effect since the first Congress, if the House vote on a proposition is a tie, the proposition is defeated. Rule I clause 6. *Manual* § 632. See also Hinds §§ 5926, 5964.

Two-thirds Votes

Under the Constitution or by House rule, a two-thirds vote is expressly required in the House on:

- Amendments to the Constitution. U.S. const. art. V. *Manual* § 190.
- Passage of bills over a veto. U.S. Const. art. I § 7. *Manual* § 104.
- Dispensing with Calendar Wednesday. Rule XXIV. *Manual* § 897.
- Dispensing with the call of the Private Calendar. Rule XXIV. *Manual* § 893.
- Same-day consideration of reports from the Committee on Rules. Rule XI clause 4b. *Manual* § 729a.
- Suspension of the rules. Rule XXVII. *Manual* § 902.
- Expulsion of a Member. U.S. Const. art. I § 5. *Manual* § 63.
- Removal of political disabilities. U.S. Const. Amendment XIV § 3. *Manual* § 230.

A two-thirds vote ordinarily means two-thirds of those voting, a quorum being present, and not two-thirds of the entire membership. Such a vote requires an affirmative vote by two-thirds of those Members actually voting; Members who indicate only that they are ''present'' are not counted in determining the two-thirds figure. 98–1, Nov. 15, 1983, p 32685. This method of computing a two-thirds vote is applied to votes on passage of a constitutional amendment (5 Hinds § 7027; 8 Cannon § 3503), to votes on the passage of a bill over the President's veto (7 Cannon § 1111), and to a vote on a motion to suspend the rules (97–1, Dec. 16, 1981, pp 31850 *et seq.*).

Three-fifths Votes

Under a rule adopted in 1995, an income tax rate increase can be passed only by a vote of not less than three-fifths of the Members voting. Rule XXI clause 5(c).

A bill called up from the Corrections Day Calendar also requires a three-fifths vote for passage. Rule XIII clause 4(c).

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